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The Homeless of New York

Thomas J. Main

Dealing with the High-Rate Offender — *James Q. Wilson*

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Two Views on American Industrial Policy

George Gilder on the "Supply-Side Left"

Amitai Etzioni on the Japanese Example

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The homeless of New York

THOMAS J. MAIN

In most neighborhoods of New York City it is possible to see a large number of people in the streets who are variously described as "vagrants," as "bag people," or, most often, as "the homeless." It is not at all unusual today to see several homeless people stretched out in a subway station; tourists in Greenwich Village seem surrounded by these aimless wanderers; and everyone who uses Pennsylvania Station or the Port Authority Bus Terminal must have seen those who have made these public places their homes. Such a situation could not fail to attract attention, and in fact New York's news media frequently run reports on the homeless, community service organizations devote much effort to advocacy and research work on the subject, and the city spends considerable resources on the problem. In fact, it is no exaggeration to say that, in terms of public attention and growth of government involvement, this is one of the city's most pressing problems.

New York's many homeless people have a very strong impact on the other people who use the streets. Obviously, the sight of tattered or disoriented people sleeping on the street, sifting through garbage cans, or otherwise behaving bizarrely, is very disturbing, and when the number of people doing such things begins to in-

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crease in a neighborhood, the reaction can be quite strong. Recently, when the opening of a shelter for homeless people in a nearby church brought more of their numbers to one neighborhood, the secretary of the community board wrote to Mayor Edward I. Koch as follows:

> Since the program opened, this has been a disaster area. Our brownstone steps, doorways and vestibules have been invaded by derelicts and bag people—and their urine and feces. Some of us have been physically attacked by the more violent of the church's clients.
>
> A bag person couple were seen fornicating on the church steps one afternoon. Some of their male clients lie on our sidewalks exposing their genitalia. All of this, and there is more, is not only disgusting and dangerous to our adult population, but we have young people living here as well.[1]

With such passionate feelings aroused, the press began to pay a great deal of attention to the problem. The *New York Times*, local TV stations, and other New York media have run many stories on the homeless, and *New York* magazine went so far as to have John R. Coleman (a former president of Haverford College who once used his sabbatical to investigate the conditions of the disadvantaged by working as a garbage collector) write a long article describing the ten days he chose to spend living on the city's streets. As Mayor Koch has said, "Whenever I pick up a newspaper, or listen to the news, I find stories about one of our most pressing problems—that of the homeless."[2]

Not only are the media paying attention to the homeless, but so are the city's many community service and "advocacy" organizations. Moreover, as other cities find that they too must find a way to deal with this population, still more advocacy groups are becoming involved. For example, in Washington, D.C., the Community for Creative Non-Violence established, as a way of protesting the plight of homeless people, two tent cities for them on the Mall and in Lafayette Park.

Before many other advocacy groups resort to such desperate tactics, perhaps a closer look at the situation in New York, and at the policies the city has adopted, is in order. Sobriety has been in short supply in discussions of the terrible plight of the homeless, yet

---

[1] Deirdre Carmody, "New York is Facing 'Crisis' on Vagrants," *New York Times* (June 28, 1981): 1.

[2] Edward I. Koch, "Homeless: One Place to Turn," *New York Times* (February 26, 1983).

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without it we cannot determine whether current thinking and policy are well tailored to the problem at hand.[3]

Legal advocacy work begins

One of the New York groups that is most active in the cause of the homeless is Coalition for the Homeless (CFTH), whose director is Robert Hayes, a New York lawyer. CFTH coordinates the activities of the various advocacy groups involved with the homeless, but is primarily involved with public interest litigation on their behalf.

Robert Hayes began investigating the condition of the homeless in 1978. Then, as now, the city ran a shelter system—a system of lodging houses and auxiliary services for those who have nowhere else to go. Hayes investigated the various kinds of lodging to which the city directed homeless people: the Men's Shelter at 8 East Third Street, which is the principal intake point for the rest of the men's shelter system; the Bowery hotels—or flophouses—to which the Men's Shelter issues vouchers; and later the Keener building (an abandoned mental institution on Wards Island opened in 1979 to accommodate the growing demand for shelter). At the time Hayes began his work, the city sent men applying for shelter to the Bowery hotels, or to Camp LaGuardia, a shelter 60 miles from the city designed to accommodate older clients. If both these places were filled, men slept in the "big room," the largest room of the Men's Shelter. After the "big room" was filled, other applicants were simply turned back on the streets.[4]

Hayes interviewed many homeless men and learned, according to CFTH literature, that they "found the streets and subways less dangerous and degrading" than the shelter system. "Streets were [the] preferred option . . . because conditions at the city shelter were so abominable." He therefore felt that "the demand for shelter beds was far lower than the true need since conditions at the municipal shelter effectively deterred many of the homeless from even seeking shelter."[5] Hayes had come to the conclusion that the

[3] This article will deal primarily with New York's shelter system and the lodging of homeless people. In a second article I will consider the street life of the homeless.

[4] Ellen Baxter and Kim Hopper, "Private Lives/Public Spaces: Homeless Adults on the Streets of New York City" (New York: Community Service Society, February 1981), p. 57.

[5] Kim Hopper and L. Stuart Cox, "Litigation in Advocacy for the Homeless: The Case of New York City" (New York: Coalition for the Homeless, May 1982), p. 8.

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shelters discouraged clients from using them, and were thus forcing people back on to the streets.

At this point Hayes decided to do something—and what he did seems to have been determined by his belief that what was needed was "recognition with the force of law of a right to shelter." The reasoning, apparently, was that if shelter was recognized as a right, rather than as a matter of social service, then no one could legitimately be deterred from claiming it. The conceptualization of the problem—as one of rights—also determined the avenue through which it would be settled: the courts. CFTH was aware of this implication, and of the problems it might raise. A CFTH report, "Litigation in Advocacy for the Homeless," states that, "It is rare that a 'right to shelter' will be forthrightly espoused in any jurisdiction. Instead, the more probable course would be one which would require creative interpretation of a more general statutory and constitutional language to arrive at an enforceable entitlement." In other words, open-ended rights are rarely granted to anything, so if one is searching for such a right one must tease it out of some apparently non-germane constitutional provision or statute.

Such creative work is what Hayes then began. He found entitlements to shelter implied in the New York State Constitution, the New York State Social Service Law, the New York Municipal Law, and even the equal protection provision of the U.S. Constitution. Thus, according to Hayes, the following lines from the New York State Constitution imply an enforceable right to shelter: "The aid, care and support of the needy are public concerns and shall be provided by the state . . . as the legislature may from time to time determine."[6] Whether the legislature has ever determined to establish a right to shelter is something the CFTH report does not discuss. But Hayes was convinced that advocacy through the courts was crucial to solving the problems of the homeless, and with such arguments in mind, he gathered together several homeless men, including one Robert Callahan, to serve as co-litigants against the city and state.

The courts step in

The case of *Callahan* v. *Carey* went to the New York State Supreme Court in October 1979. In December the court granted the plaintiffs a preliminary injunction that required the city to provide

[6] Quoted in Hopper and Cox, "Litigation in Advocacy for the Homeless," pp. 9-11.

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shelter to any man who requested it. On Christmas Eve the court entered a temporary order requiring the city to "provide shelter (including bedding, wholesome food and adequate security and supervision) to any person who applies for shelter at the Men's Shelter." To fulfill the court's requirement, the city quickly opened the Keener building as a shelter. Demand for shelter promptly shot up; Keener was filled to overflowing with more than 625 men by early 1980. Partly in response to this situation, the city eventually had a new building constructed on Wards Island—the Schwartz building—which has housed 400 men almost since it opened in 1982.

By the summer of 1981 the case of *Callahan* v. *Carey* had come to trial. At this point a compromise was reached: Hayes and the plaintiffs had been demanding not merely recognition of a right to shelter, but that this shelter be "community based," i.e., that shelters be scattered throughout the city and empowered to admit clients directly, to avoid the "deterrent effect" of having clients processed primarily in the Bowery. When the city pointed out that community opposition would make this plan nearly impossible, the requirement was dropped, with the city agreeing to supply all applicants with shelter of a quality to be mandated by the courts. This compromise was the basis for a consent decree, which was signed in August 1981 and which amounted to "recognition with the force of law of a right to shelter."

Since then CFTH has forced the city to live up to its obligation, and to increase steadily the capacity of the system in order to eliminate the "deterrent" factor of limited beds. Usually after such an increase, demand for shelter has shot up until the new capacity is filled and the city is obliged to find more beds. Thus, six weeks after the consent decree was signed, the city ran out of beds.[7] CFTH then brought the city back into court, where the city was ordered to open another 400 beds within 24 hours. The city complied by housing men at an abandoned Brooklyn school building. Within a month, the school's capacity was filled. Again the city was brought back into court, and again a new shelter was opened, this one in an abandoned armory. But this action did not entirely satisfy the court, and in response to the court's demand that the city meet the growing demand for shelter, the city opened yet another armory to homeless men. Since the December injunction the city has been making a steady effort to provide for the homeless, and so no longer turns any applicants away.

[7] Hopper and Cox, "Litigation in Advocacy for the Homeless," p. 16.

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One must be careful in asserting that the outcome of *Callahan* v. *Carey* was recognition of a right to shelter. The suit ended with the signing of a consent decree, and left all points of law—including the determination of a right to shelter—legally unsettled. However, it is true that since the December 1979 injunction the city has been obliged to follow a de facto policy which assumes such a right. Moreover, since the 1981 consent decree, the city has been obliged to meet certain quality standards which the consent decree lays out in detail, and which remove the most obvious causes for any "deterrent" effect. Bedding and clothes issues must be clean, heat maintained, a minimum amount of space per person provided, a recreation program developed, etc.

Research and advocacy work

The homeless have also attracted the attention of advocacy groups whose primary interest is research. Most important among these is Community Service Society of New York (CSS). CSS has produced two extensive studies of homelessness, "Private Lives/ Public Spaces: Homeless Adults on the Streets of New York City," (February 1981) and "One Year Later: The Homeless Poor in New York City, 1982" (June 1982). The CSS reports dealt with the life of the homeless on the streets, and also with the quality of the shelter system. CSS advanced two claims that became especially influential.

First, CSS made an estimate of the number of homeless people in New York City. CSS held that there were 36,000, this figure being based on estimates made by the New York State Office of Mental Health (OMH).[8] In an internal memo dated October 12, 1979, OMH in turn based its figure of 30,000 on estimates made by the Men's Shelter that the approximately 9,000 different men they serviced represented 30 percent of the homeless men in the city. CSS then added to this the Manhattan Bowery Corporation's estimate of 6,000-6,500 "periodically homeless" women to arrive at the 36,000 figure.

CSS made this estimate public in February 1981. According to the New York City Human Resources Administration (HRA), for FY 1980-81 the overall daily average attendance in the shelters was 2,428.[9] Again, since December 1979 the city has been required to

[8] Baxter and Hopper, "Private Lives/Public Spaces," p. vi.
[9] Human Resources Administration of the City of New York, "Monthly Shelter Report" (November 17, 1982), Table A1.

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provide shelter to any man who requests it. (The city also voluntarily agreed to provide shelter to all women who request it.) How did CSS explain the fact that, while their estimate of the number of homeless people was 36,000, not even a tenth of that number had requested shelter from the city? The answer lies in the second main contention of CSS, which concerned the nature of the shelter system. CSS held, as did CFTH, that the conditions at these facilities were so bad that the homeless refused to use them and preferred to stay on the streets. According to CSS:

> What public resources do exist, moreover, have their own deterrent power. The deplorable conditions of the flophouses and Keener Building, high incidence of violence, routine contempt meted out to applicants for shelter, and the historical association of the Bowery as the abode of "bums," all make the Men's Shelter the place of last resort for many homeless men. For different reasons—namely exclusionary policies, limited beds, and the militaristic regime—the Women's Shelter can effectively service only a small proportion of homeless women. . . . Given the state of the public shelters—or perhaps more accurately, given the nature of the personal costs extracted when one submits to their regimes and conditions—the decision made by many homeless people to fend for themselves on the streets gains at least a measure of intelligibility.[10]

In short, CSS came to very much the same conclusions about the plight of New York's homeless and about the condition of the shelter system that Hayes did: The problem was enormous and the shelter system was inadequate to help.

A new and improved shelter system

Callahan v. *Carey* and the publicity brought on by the advocates' work have had a large impact on the shelter system, especially in regard to increasing the supply of beds, improving conditions, and generally removing deterrent factors. Therefore, it is important to understand what the shelter system is like *now*, for it has changed quite a bit since Hayes first began his investigations back in 1978. (The emphasis here will be on the facilities for men, since they were the focus of the *Callahan* v. *Carey* suit, and since the overwhelming majority of the shelter clients are male.)

The Men's Shelter is located in the Lower East Side off the Bowery. Most of the men who use the shelters enter here, where they are given food, showers, and medical services (including psychiat-

[10] Baxter and Hopper, "Private Lives/Public Spaces," p. 103.

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ric services). Within ten days of their coming to the shelter, all men receive a social service interview by the "5 x 8 staff," so called because the client's records are entered by the interviewer on 5 x 8 index cards. Interviewers may refer clients to one of several special social service units, such as the psychiatric unit, or the under-21 unit.

Very few men actually sleep at the Men's Shelter, however; it contains only a few beds in its infirmary. Rather, clients are generally sent to one of several principal types of lodging. The majority are given housing vouchers, which entitle them to spend the night in one of the Bowery hotels: These are the Union, the Kenton, the Palace, the Sunshine, the Delevan, and the Stevenson. These are among the least comfortable lodgings in the shelter system. Some of the men sleep in small cubby-like rooms covered on the top with chicken wire; other accommodations are dormitory style. About 1,150 men sleep in the hotels.

After processing at the Men's Shelter, men may also be sent to a city-run shelter for lodging. The exact assignment will depend on the vacancy rate at the various shelters. The principal city-run shelters are the Charles H. Gay Shelter Center on Wards Island, the East New York Shelter in Brooklyn, and the Harlem Shelter. Men who are assigned to these shelters receive free transportation there and back to the Men's Shelter in the morning.

Of these shelters, the Gay center is by far the largest, lodging 816 men in its two buildings (East New York houses 350 and the Harlem Shelter holds 200).[11] The Gay center consists of the Keener building and the Schwartz building, which is newly built and which opened in the spring of 1982. The entire center is run by the private charitable organization, the Volunteers of America, under contract to the city.

While CSS reports that conditions at the Keener building are "deplorable" the fact is that conditions there are now quite good. Men in the Keener building are assigned to fair-sized "semi-private" rooms which sleep two or three people. Accommodations in the Schwartz building are dormitory style, but still fairly spacious. The Schwartz building, since it is brand new, has a clean and modern look to it. Both buildings have a TV room. The Schwartz building also has kitchen and dining facilities. The center has a medical clinic and mental health services on site.

[11] Human Resources Administration of the City of New York, "Providing Services for the Homeless: The New York City Program" (December, 1982), pp. 9-13.

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When the shelters and Bowery hotels are filled, the city will send people to one of the armories it has opened for the homeless with the cooperation of the state. The Flushing Armory and the Lexington Avenue Armory are for women; the Kingsbridge Armory in the Bronx, the Fort Washington Armory in Manhattan, and the Park Avenue Armory are for men. The Fort Washington Armory, which holds 600 people, is the largest of these sites. All the armories are open on a 24-hour basis, which means that clients can be admitted there directly, without having to go first through the East Third Street site.

The city also runs a facility some 60 miles outside the city, Camp LaGuardia, which sleeps approximately 950 men. This shelter is primarily intended for use by older clients. It is currently undergoing extensive renovation. New dormitories are being built which will eventually house 600 men by the fall of 1984.

There are also three main shelters for women. The Women's Shelter, which is also the principal intake center for women, is in the Lower East Side. It provides meals, showers and social services for the women in the shelter system, and has 51 beds. Other sites are the Women's Shelter Annex, which holds 150 women, and the Bushwick Center.

As can be seen, the city has developed an extensive system to comply with the first requirement of the *Callahan* v. *Carey* consent decree—that all applicants be given shelter. But the city is also making efforts to comply with the other aspect of the consent decree —the quality standards. According to CFTH, "the shelters remain dangerous and forbidding, continuing to deter many homeless men from coming off the streets."[12] But the city disagrees. It holds that it is in substantial compliance with all aspects of the quality requirements. According to Mayor Koch:

> I don't agree with the way the court is trying to implement the consent agreement. I think it is enough to provide shelter for the evening, three hot meals a day, showers, medical care, clothing and counseling. The court says we have to provide all these services in shelters that are open 24 hours a day so that the homeless will not have to be bused from where they shower and eat to where they sleep. We bused only a small percentage of the homeless anyway, but this requirement has made it difficult to find appropriate facilities as the number of homeless has grown, and it also has made the program more expensive than it needs to be.[13]

[12] Hopper and Cox, "Litigation in Advocacy for the Homeless," p. 17.
[13] Koch, "Homeless: One Place to Turn."

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It seems then, that there is no substantial dispute over whether the city is in compliance with the requirement to provide shelter, food, and auxiliary care of essentially decent quality. Such dispute as there is arises over such less than central matters as shelter hours and transportation.

Where are the homeless now?

Clearly, the city has developed a large system and made great efforts to recognize the de facto right to shelter, and to eliminate any deterrent factors from the shelter system. The advocacy groups have therefore largely gotten their way, but at a high price. In early 1978, when Robert Hayes began his work, the city's operating budget for the homeless was $6.8 million; for the current fiscal year it is projected to be $38 million.[14] What, then, has been the effect of instituting the advocacy groups' policies on a large scale?

It is now turning out that some CSS research work, which was never intended to be very rigorous, is indeed rather shaky. The estimate of 36,000 homeless people especially seems very soft. The fact of the matter is that no one knows how many homeless people there are *on the street.* The city had plans to conduct a census of people actually on the street or in the shelters, but they were dropped after CSS severely criticized the project and funds were unavailable. We do know, however, how many people are in the shelters, and it is nowhere near 36,000. For FY 1982-83 to date (i.e., July 1982—April 1983) the overall daily average attendance in the shelters was 4,235.[15] When cold weather set in, attendance began to rise. On Friday, February 11, 1983, a large blizzard hit New York with more than 20 inches of snow. Attendance at the shelters that night was 4,771.[16] The next night, the twelfth, attendance was 4,873, and on the thirteenth it began to drop again to 4,825. (Interestingly, the figure of 4,771 for the eleventh represents a *decrease* from the night before the blizzard hit, the tenth, when attendance was 4,909.) What, one wonders, happened to the additional 31,000 homeless people who were presumably out in the streets or subways during the blizzard, assuming the CSS estimate is accurate?

---

[14] Sarah L. Kellerman, "Is Deinstitutionalization Working for the Mentally Ill?" (New York: Department of Mental Health, Mental Retardation and Alcoholism Services, 1982), p. 9.

[15] Human Resources Administration of the City of New York, "Monthly Shelter Report" (April, 1983).

[16] Interview, Kathryn Ruby, spokesman for the Human Resources Administration.

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No one knows, but for whatever reason, they did not show up in the shelters. This does not prove that there are not thousands of homeless people who are so deterred from using the shelters that not even blizzards will drive them in. On the other hand, it does not offer any support for the CSS figures either.

This brings us to another issue that CSS and other advocacy groups have raised: deterrence. These groups still think that conditions at the shelters deter a large number of homeless people from using the shelters. There are, by this account, many thousands still out on the streets or otherwise in some sense homeless, but deterred from using the shelters. And this is indeed the point that CSS makes. According to the *New York Times*:

> Ellen Baxter, a research associate at the Community Service Society, pointed out that the largest city shelter opened for women, on East Third Street, filled up within two weeks. "Where were those 80 women before that?" she asked. "Every time a decent shelter opens, it fills immediately." [17]

The implication here is that the shelter population pool is simply a group of people without homes, who live either on the street or in otherwise intolerable conditions until the shelters become decent. But how true is this picture? Who, indeed, are the homeless?

Types of homelessness

Trying to categorize the shelter clients is very difficult. Indeed, the salient point to be made about them is that they are a very heterogeneous group. They have come to the shelters because of a variety of misfortunes and pathologies, and their housing situations before they come to the shelter are very diverse—many do not simply move from the streets into the shelter, although, of course, many do. In fact, the more one looks at the shelter clients, the less obvious it becomes that they share a common state which may be straightforwardly defined as "homelessness."

In 1982, the Bureau of Management Systems, Planning, Research and Evaluation of the City Human Resources Administration, under the direction of Stephen Crystal, released two extensive reports on the client population of the city's men's shelter system. They were, "Chronic and Situational Dependency: Long-Term Residents in a Shelter for Men" (hereafter the Keener report) and "New Arrivals:

[17] Robin Herman, "City to Make a Count of Homeless People," *New York Times* (December 30, 1981): B1.

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TABLE I. *Categories of Long-Term Shelter Clients (Based on Overall Interviewer Assessments of Primary Problems)*[1]

GROUP	NUMBER OF MEN	PERCENTAGE OF TOTAL	MEAN AGE
Psychiatric Only	59	34%	33
Alcoholic Only	10	6	41
Economic Only	33	19	32
Drug Only	4	2	30
Physical Disability Only	6	3	49
Total	112	64%	

1 Source: Stephen Crystal, et al., "Chronic and Situational Dependency: Long-Term Residents in a Shelter for Men" (New York: Human Resources Administration, May, 1982), p. iv.

First Time Shelter Clients."[18] The Keener report was a study of 173 men who had been living in the Keener building for two months or more. "New Arrivals" presented the results of 687 interviews conducted with first-time clients either at the Men's Shelter or the East New York Shelter. Both reports asked a variety of questions regarding the men's background and their reasons for coming to the shelter. "New Arrivals" was principally concerned with determining where the clients were immediately before they came to the shelter. The Keener study's purpose was to determine in detail who long-time users of the shelter were and why they came to need the shelters' emergency services.

The Keener study is particularly important for understanding the heterogeneous nature of the shelter population, for it attempted to devise a typology of its subjects derived "from the overall interviewer assessments of primary problems" and found that the subgroups so classified "are very different from one another." The Keener report thus generated "relatively clear-cut categories for about two thirds of the men" (see Table I).

[18] For the Keener study, Crystal and his staff developed a questionnaire that asked, "in addition to basic descriptive data (employment, education, medical and mental history, etc.) numerous questions relating to attitudes, values, and self image . . . to facilitate the differentiation of respondents into categories that realistically reflect their potentials for more independent, stable lives." Interviews were conducted with 128 men who had been at Keener two months or longer. In addition, 45 men were independently interviewed by OMH and their responses were collected from OMH interview forms and inscribed on the questionnaire.

For the "New Arrivals" study, a form of five basic questions regarding the client's recent accommodations was developed. For one month beginning January 22, 1982, clients at the Men's Shelter and East New York site who had never been serviced before were asked these questions during the regular 5 x 8 interview. A total of 687 completed interviews were analyzed, although since specific items were not necessarily completed for all respondents, there are variations in the total numbers on which the tables are based.

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The largest category was "psychiatric only," which accounted for 34 percent of these men. These overlapped to a large extent with the "major subgroup [that] consisted of *those with major psychiatric* disabilities or histories. One third of the long term men acknowledged past psychiatric hospitalization" (italics in original). The mean age of these men was 33. Thus the popular perception of the homeless as consisting of a large number of former mental patients seems to have some basis in fact.

The third largest category of the Keener study was "alcoholic only," which consisted of 6 percent of its subjects. The study also classified 2 percent of its subjects as "drug only." The study also found that of the men it directly interviewed, "Thirty-five percent were regular past or present alcohol abusers" and that "Almost a quarter . . . acknowledged that they were past regular users of hard drugs; an additional 3 percent stated they were current users." Thus, although the percentage of current "alcohol only" and "drug only" clients is relatively low, much higher percentages have had past experiences with alcohol or drugs that may have contributed to their becoming homeless. Thus the traditional vision of shelter-users as consisting largely of alcoholics has only some validity, although the study notes that "hard drugs abuse is beginning to catch up with the traditional alcohol abuse as the major substance abuse problem."

The problematic category: "economic only"

This brings us to the second largest category identified in the Keener study, and also in some respects the most interesting: those men classified as "economic only," who make up 19 percent of the subjects, and whose mean age was 32. Of them the report stated:

> A group of particular concern is the group of 33 men considered "economic only." This relatively young group of men may fall into the category of "discouraged workers" whose numbers, particularly among younger minority men, have been increasing rapidly, and to disturbing dimensions, during the last year, according to Bureau of Labor Statistic reports.

The report also said of such "discouraged workers" that they "had in the past been able to function at quite high levels, both occupationally and socially." In the introduction, the report discussed the problem that such "higher functioning young men" present to the shelters:

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> As a result of a meeting on June 23, 1981, which included City Council President Carol Bellamy and HRA Administrator James Krauskopf, it was agreed that a study be undertaken of "higher functioning young men" at the Keener Shelter on Wards Island. The need for such a study was prompted by a concern that, unlike the typical shelter men serviced at the 3rd Street site, some men at Keener appeared to be capable of more independent living. Many men appear to the eye to be without the usual self-evident disabilities associated with homeless men. There was concern that a group of such men might be settling into Keener on a long term basis. Such a situation, if true, not only would have negative consequences for the men who should be encouraged towards greater independence, but could also result in increased total demand for shelter space as new men continue to enter the system.

Ultimately, the Keener study was expanded to include not merely higher functioning young men, but all long term clients. But there was support for the suspicion that such people were settling into the shelter and driving up the total demand for shelter, primarily in the "New Arrivals" study, which found that:

> Like the Keener study, the findings show that there are substantial numbers of men seeking services at the shelters who have significant job skills and histories, and that many have previously been able to support themselves through employment. This further supports the need to develop employment referrals, supported work, and other means of fostering economic self-sufficiency. The findings also suggest that the shelters are drawing from a potentially very large population pool, most of whom are not "homeless" in the sense of being undomiciled at the time of coming to the shelter. Thus future demand may be very large. It will be important to carefully assess client needs and resources, to impose appropriate structure and make appropriate demands on clients' own efforts.

The report included considerable evidence that the shelters were drawing on a large pool of higher functioning young men who were not homeless before they came to the shelter. The subjects had been asked where they spent the night before they came to the shelter (see Table II). The report found that:

> *The majority of men had not spent the previous night in the streets or subways,* although this was the largest single category. Thirty eight percent of the men had done so, while friends (15 percent), family (14 percent), and own apartment (12 percent) accounted together for slightly more. The fact that *one of seven new men had spent the previous night with family* is particularly striking. It is also significant that *12 percent had spent the previous night in their own apartment.* Institutions of various sorts, including jail, account for almost all the rest, while hotels accounted for a smaller proportion than expected, only 4 percent. Just over sixty percent of the men had not been in the

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TABLE II. *Place of Previous Night's Stay of Shelter Clients*[1]

TYPE OF PLACE	NUMBER OF MEN	PERCENT OF TOTAL
Street or Subway	256	37.6%
Friends	105	15.4
Family	96	14.1
Own Apartment	80	11.7
Other Institution	57	8.4
Hospital	38	5.6
SRO	29	4.3
Jail	13	1.9
CLH (Bowery Hotel)	7	1.0
Totals	681	100.0%

1 Source: Stephen Crystal, et al., "New Arrivals: First-Time Shelter Clients" (New York: Human Resources Administration, November 1982, Revised May 1983), p. 13, Table 6.

> streets or subways in any of their last three sleeping arrangements [italics in the original].

In fact, the "New Arrivals" study found that together the categories of "friends," "family," "own apartment," and "SRO" accounted for the previous night's stay of 46 percent of the men. Of course, the fact that these men had spent the previous night somewhere other than the streets does not imply that they could easily return there immediately. The "New Arrivals" report also found that most of the men who spent the previous night with family or friends were—for whatever reasons—no longer welcome, and that most who have stayed in their own apartments had been evicted (although the report did not give exact figures in its final version). However, other findings in the report suggest that most of the men were not usually homeless. Only 4.7 percent of the men gave the streets or subways as their usual place of residence; for 43 percent such usual residence was found either in their own apartment or with family or friends.[19] (The "New Arrivals" report defined usual prior residence as "the most recent place if that accounted for six months, the previous if that was longer or accounted for six months, or the last stable place within the last year.") Thus although most of these men may not have had any other option when they came to the shelter, most of them have had other housing available to them in the recent past, and conceivably might again in the near future if the proper help is available. This would be especially true of those who stayed with family and friends, which ties might still

19 Stephen Crystal, et al., "New Arrivals: First-Time Shelter Clients" (New York: Human Resources Administration, November 1982, Revised May 1983), p. 14, Table 7.

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be alive. According to the report, "family contacts are recent and informal support systems may still be viable."

The points to be emphasized are that the shelter clients are an extremely heterogeneous group, and that the various subgroups of the homeless are homeless in very different senses. The clients in the Keener study classified as "psychiatric only" are homeless, but this is because they are severely mentally ill. The "alcoholic only" and "drug only" cases are another issue: These people are homeless, but again, their dominant problem is not homelessness but alcoholism or drug addiction. Finally we have the "economic only" cases. It turns out that in many instances, these people are not simply homeless before they come to the shelters at all. Many do, in fact, have other housing options available to them. These are the people who represent a really new and challenging development. The important question is: Why are they in the shelters at all?

The background of "economic only" clients

Many of these "economic only" clients enter the shelter system, not because they have nowhere else to go, but rather because their circumstances are such that the shelters become—if it may be so put—the most "attractive" choice among other options.

Of course, one must be careful not to exaggerate the "attractiveness" of the shelters, which is purely relative. They are, to be sure, rather rough and ready places, which no one with even moderate resources and established social connections would want to use. But the sad fact is that a large number of youths are not so fortunate. For a variety of reasons, the shelters can have a certain appeal to marginally situated youths.

Consider, for example, the effect of high unemployment among minority youths. Of course, unemployment by itself does not make one a candidate for homelessness. Indeed, it used to be received wisdom among shelter workers that demand for shelter was inelastic with regard to unemployment, because the unemployed had of course once been employed and therefore had the personal skills and resources necessary to find shelter. But high minority-youth unemployment affects many people who are marginally situated to begin with. For these young people, family ties are fairly tenuous; further, these families are often housed in relatively poor conditions. So, although an unemployed minority youth may have family members who would ordinarily be expected to put him up, these people may in fact be less than overjoyed to have him.

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Of course, welfare benefits are available to someone so situated. New York State Home Relief grants a housing allowance of $152 a month to single adults, but this is not a flat grant.[20] It is applicable only to rent, and if one's rent is less, the difference is returned to the welfare office. Neither can clients rent an apartment with rent over $152 and then split the costs with others. Thus the housing allowance will only buy housing of the poorest quality, given the cost of New York apartments. Housing allowances are another factor to consider in determining the relative attractiveness of the shelters, for the allowance often simply cannot buy housing any better than the shelters.

This brings us to an especially important factor in determining the relative attractiveness of the shelters to marginal youths—the shelters themselves. The fact is that the shelters—although of varying quality—are by and large not such bad places to stay. The Gay shelter—particularly the Schwartz building—is in especially good shape. Other shelter lodgings are not so comfortable. However, even these lodgings have important advantages over other sorts of shelter that their clients might find available.

First of all, since the shelters and hotels are either run or regulated by the city, they are subject to regular inspection—both by the city and advocacy groups—which guarantees that basic services will be regularly provided. Thus heat, plumbing, and cleanliness are all maintained at a high level, and with no efforts by the clients. Moreover, shelters provide such auxiliary services as food, clothing, and medical attention to those who need it, services which are generally not included in the rent for private lodging. Finally, unlike many landlords, and unlike the welfare system, the shelters are by design very easy to deal with. Their extensive staffs are paid to make things easy on the clients, and to help them where they can so that "low functioning" people will not be discouraged from using them. Moreover, in all these respects, the shelters are getting better: Provision of basic and auxiliary services continues to improve, and shelter personnel are being admonished—mostly by the advocacy groups—to become still more accommodating.

For a large number of marginally situated, but not necessarily destitute, inner-city youths, the shelters may represent the best of various housing options. Such people may have somewhat tenuous relations with family or friends who might put them up

[20] Vera Institute of Justice, "Apartment Hotel Project" (New York, August 1982), p. 7.

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if all else failed. But there is nothing tenuous about the shelters—it is certain they will accept whoever applies. Again, unemployed single adults have access to Home Relief housing allowances. But the shelters very likely provide better lodging than they can find for themselves on Home Relief. Potential shelter clients may have at least the minimal employment skills necessary to maintain the menial sort of jobs that one in desperate circumstances might ordinarily take to avoid sheer destitution. But shelters obviate the necessity of taking such work merely to obtain basic resources and provide employment counseling to boot. For such people, there is simply no reason not to move into the shelters. So that is what they do.

The *New York Times* recently reported the case history of one such marginally situated youth who ended up in the shelter. The article tells of Gregory Jonassaint, who in some respects is representative of the shelter's higher-functioning young clients:

> A few months ago, Mr. Jonassaint was living in the spit-and-polish world of the Marine Corps. Now, at 19, he is homeless and moving through the city's seamy underside. . . . "After I got out of the Marines and before I came here, I was living at my mother's house in Brooklyn, but my stepfather threw me out. . . ." He is the product of what he describes as a "very strict" Haitian-American family and grew up in Brooklyn in an atmosphere of family disputes that he says often pitted his stepfather against his mother and siblings. . . . "I looked for cashier's jobs, mailroom jobs, general maintenance and clerk jobs but I couldn't find anything. . . . I tried to get welfare so I could find a place since I couldn't find a job. But welfare wanted my parents to support me. And my father kept saying that I had to get out. So I ended up here."[21]

Though he was lucky enough to have a background of military service (he was honorably discharged from the Marines after an accident), Mr. Jonassaint displays all the characteristics of an "economic only" client. He was unemployed, a situation that weakened his already shaky family life, and welfare was unable to help him because it was more restrictive than the shelter system. On the other hand, he did have a recent employment history and was not "chronically" homeless. In the end he was able to use his various resources to get out of the shelter: His mother eventually offered to take him back in, and he reapplied for welfare and seems likely to get it this time. He is an excellent example of a shelter client

[21] Sheila Rule, "More Men Under 21 Housed in City Shelters for Homeless," *New York Times* (March 7, 1983): B3.

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with many opportunities available to him who nonetheless feels it necessary to use the shelters.

Our three "homeless" problems

The problem of homelessness thus turns out to be at least three very different problems in New York City. The first is a problem with former mental patients and others suffering from mental illness; this represents an organic, quasi-medical problem. The second is the problem of alcohol and drug abusers: Both of these groups are homeless largely as a result of their substance abuse problem and are in need of specialized treatment. The third is the difficult case—the "economic only" cases. These are people who are suffering from no disability. They are simply locked in a network of circumstances that makes the shelters "attractive" to them. Obviously this is a very different problem from the psychiatric and alcohol and drug abuse cases. We must not allow ourselves to mix these groups together simply because they all use the shelters.

Of the three groups described above, the most problematic is the higher-functioning young men. The presence of the other two groups in the shelters is widely recognized by the advocacy groups and everyone else. CSS first began its research over concern with the conditions of the mentally ill on the streets and in the shelters, and no one has ever doubted that there are many alcoholics and drug abusers among the shelter clients. But that the shelters are also housing people who are not chronically homeless, and are not undomiciled at the time of coming to the shelters, is a reality that has been harder for the advocacy groups to face. They simply refuse to admit that the presence of such people should make any substantial difference for shelter policy. The following passage is typical of the CSS attitude on this subject:

> The city . . . argues that people who were living with family or friends before coming to the shelter are not homeless. Why they left is of no concern.
>
> This view animates the city's interest in distinguishing—as the April 23 draft proposal [of a census to count homeless people] puts it with disarming candor—the "truly homeless" from other marginally needy groups. The assumption, of course, is that large numbers of people are abandoning acceptable residences to take refuge in the public shelters. In support of this claim no data . . . has been advanced. Nor to our knowledge, are any data available to justify the recent claim by an HRA official that "certainly a hundred, maybe more" currently shel-

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> tered people are not "truly homeless."... No bolder invocation of the invidious distinction between the "deserving" and "undeserving" poor can be found.[22]

As we have seen, in fact there is ample data to suggest that a large portion of the shelter population is not "truly homeless" in the sense of being chronically without lodgings before coming to the shelter. Again, the "New Arrivals" report found that some 30 percent of its subjects had spent the night before with family and friends. And despite the CSS objections, there seems every reason to distinguish such people from other sub-groups of the homeless. Surely someone who recently had family ties presents a very different problem for social service intervention than a chronically homeless former mental patient or alcoholic.

The *real* reason CSS will not acknowledge the problem of "economic only" clients is that to do so smacks of drawing the "invidious" distinction between the deserving and undeserving clients. In other words, the reluctance of CSS to come to grips with the problem that higher functioning clients present to the shelter system is a matter not of facts but of ideology. CSS is in principle against attempts to isolate such clients and to treat them differently from other clients. Everyone should be given shelter and that is the end of the matter.

The ideology of the advocates

What is the ideology of the advocacy groups? As we have seen, they reject the conventional distinction between the deserving and the undeserving poor—and not only for homeless people, but also for other welfare groups. CSS asks:

> How valid now is the conventional distinction between the deserving and undeserving poor, that relegates the homeless to the latter class and treats them accordingly? Can a policy of grudging relief be defended, in which what appears as the lineaments of aid mask what is in fact merely a means of containing and penalizing its recipients? [23]

And the authors also suggest that our experience with the homeless, which supposedly has refuted the "policy of grudging relief," should be applied to other welfare issues as well:

> For the homeless poor effectively to plead their case for relief, it will

[22] Kim Hopper et al., "One Year Later: The Homeless Poor in New York City 1982" (New York: Community Service Society, June 1982), pp. 45-46.
[23] Ibid., p. 51.

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> be increasingly critical for them to make common cause with other neglected victimized populations, to force the issue away from idiosyncratic pathology or eccentricity and into the realm of common suffering; to secure, in short, the recognition that what once could be dismissed as an alien sore on the body politic has now the character of an endemic disorder. Only in this way will an effective constituency of demand—the necessary initial step in the redress of grievance—be mobilized.[24]

The point seems to be that since welfare groups are "victims" of an "endemic disorder" they have a claim to "redress of grievance" and are thus all "deserving." This "declaratory" model of welfare, in which clients need only declare themselves in need to be eligible for relief, has always dovetailed with a radical critique of American society. And CSS does indeed suggest that its work on the homeless fits into such a critique. Leo Srole, Professor of Social Sciences at Columbia University, writes in the introduction to "Private Lives/Public Spaces":

> All [of the homeless] are the "fall out" rejects of a highly competitive, cornucopian socioeconomic system that cannot mobilize the fiscal wherewithal and organizational talents for quasi-family care of its casualties.

In short, according to the ideology of the advocacy groups, homelessness and welfare issues in general are matters of systemic failure, rather than of individual responsibility. This is why they have such trouble figuring out what to do with the higher functioning clients who may have other options available to them. To confront the presence of such people as an important sub-group in the shelters, suggests, as "New Arrivals" puts it, the need to "assess client needs and resources, to impose appropriate structure and make appropriate demands on clients' own efforts." But to do so would mean some element of individual responsibility should be incorporated into the shelter's social service programs, and this is anathema to the advocacy groups' ideology. And so they simply refuse to come to grips with the special case of "economic only" clients.

Guidelines for shelter policy

How, then, *should* we cope with the problem of the "economic only" clients and with the problem of the homeless in general? First, it must be recognized that homelessness is better understood

[24] Hopper et al., "One Year Later," p. 55.

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as a matter of social service policy than as a matter of human rights. If we recognize shelter as "a basic human right," as the advocacy groups would have us do, then the logical arena for settling the problem is the courts. But the courts are not well suited to make shelter policy. As we have seen, the shelter population is very heterogeneous and the different sub-populations require specific policies devised for their needs. It is unlikely that courts will enter into such administrative detail. As CFTH admits, "courts may well be disposed to order a defendant to provide shelter, but unwilling to specify further the terms and requirements of shelter." [25] But such details are all-important in developing a shelter program that will address the various sub-populations' needs and responsibilities. We need a new way of thinking about shelter policy, one that does not impose the language of human rights on an inappropriate subject.

The most important thing to realize in trying to develop realistic guides to shelter policy is that the shelters are not simply a straightforward response to a clearly defined problem called homelessness: Rather, they are residual institutions that deal with a variety of essentially independent problems that other welfare institutions avoid. The shelters take care of the mentally ill who are not in institutions, the alcoholics and drug users who are not in other treatment programs, and the marginally poor who are not on, or not getting enough help from, welfare. Institutions already exist for dealing with all these problems, but the people in the shelters have not been helped yet. *Thus the purpose of the shelters should be to act as a safety net for such people until they can be reintegrated into a standard social service program.*

From this principle, two general guides emerge for shelter policy. First, shelters should quickly size up the basic problems of each client and then refer him to one aid program or another. No one should stay in the shelter simply to put a roof over his head. The second implication for shelter policy is that every effort should be made to keep the client's stay there brief. A client should be allowed to stay in the shelters only until he can take care of himself again, or until he can be transferred to a more permanent institution or program.

This approach is quite different from that advocated by CSS, which quite openly admits that its "basic thrust is to shift the focus from rehabilitation, the attempt to return the disabled to normalcy,

[25] Hopper and Cox, "Litigation in Advocacy for the Homeless," p. 18.

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to welfare." CSS takes as its model for shelter policy a men's shelter in Boston, the Pine Street Inn, whose basic philosophy it describes as follows:

> The object is emphatically not to "rehabilitate" the men, only to provide the essentials of life in a homelike atmosphere. The brochure distributed to volunteers put it this way: "the goal of the Inn . . . is to help the men optimally adapt to the lifestyle they sustain by choice or fortune, neither encouraging that lifestyle nor censoring it."

In this way, mental illness, drug abuse, alcoholism, and dependency become morally neutral "lifestyles" to which the shelters are to help their clients "adapt." Quite apart from the moral considerations such a position raises, the problem is that, since these pathologies are to a large extent the *cause* of the client's homelessness, simply allowing the clients to "adapt" to their problems will eventually increase demand for shelter to unacceptable levels as more and more people "adapt" to life there. Again, to prevent such an outcome, shelters must be seen as safety nets from which clients are to be referred to more permanent rehabilitation programs as soon as possible.

Separate policies for separate sub-populations

How would these general guidelines translate into specific policies for each of the three main shelter sub-populations: the mentally ill, the alcoholics and drug abusers, and the "economic only" youths?

As far as the mentally ill are concerned, the important point to make is that the shelters are not good places for them. The atmosphere in the shelters is not conducive to mental health. Nonetheless, the shelters do their best to treat mentally ill clients on the premises. After their routine social service interview, clients may be referred to the psychiatric unit, whose staff can treat them with psychotropic drugs and psychiatric social work. Mentally ill clients may also be referred for more intensive therapy to psychiatric units funded by Community Support Systems, or to the OMH-run Shelter Outreach Project.

Some psychotherapy is therefore available in the shelters; the problem is with referring the mentally ill out of the shelters. Admissions criteria to state mental hospitals are probably more restrictive now than they were before the advent of the deinstitu-

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tionalization movement. It is therefore not possible to reduce the number of the mentally ill in the shelters by institutionalizing more of them. It is usually argued that this is for the best since most mentally ill people do not need to be institutionalized and are capable of living quasi-independently in community-based, "halfway" psychiatric residences. Unfortunately, few such residences were developed. In New York State, the total capacity of such residences is 3,000 while the estimated state need is 13,000.[26] While deinstitutionalization proceeded apace during the 1960s and 1970s, no legislation provided for a transfer of mental health funding to the localities that were now supposed to care for the mentally ill. As a result, few community residences were developed. If mentally ill clients are to be referred out of the shelters, we need some combination of less restrictive state institutionalization requirements and development of local residences for the mentally ill.

Alcoholism and drug abuse are separate problems. As things now stand, the men's shelter has no specific program for dealing with drug abusers, since traditionally they have not been a major problem. But the Keener study found drug abuse to be on the rise among its clients. So the first thing the shelters ought to do for these clients is consider developing a special drug abuse unit.

A special program does exist for alcoholics. This is the Supported Work Program (SWP) in which about 60 clients are enrolled. SWP involves a kind of Alcoholics Anonymous group therapy which works its members up through four levels of functioning, of which the highest involves work for the shelter as clerks, janitors, and even bookkeepers. For at least some of its members SWP is enormously successful. (A few have even worked their way through it and into graduate school for social work certification.)

There is, however, an inevitable limitation to this and any other treatment program for alcoholics: It must be voluntary. Thus the alcoholic clients who do not enroll in SWP simply receive no treatment, and there is not much that can be done about them. Such incorrigible alcoholics may represent a "natural" shelter population, which it will be almost impossible to relocate no matter what policies are adopted. However, we should not conclude from this fact that such efforts are unnecessary for the shelter population in general.

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[26] Human Resources Administration of the City of New York, Bureau of Management Systems, Planning, Research and Evaluation, "Deinstitutionalization and the Mentally Ill" (1982), p. 4.

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Preventing dependency

This brings us to the most difficult problem for shelter policy: what to do with the higher-functioning young men. As we have seen, such people move into the shelters because it makes sense for them to do so. What we must do is change the circumstances that make the shelters attractive to them without allowing conditions there to deteriorate significantly.

The shelters have improved tremendously in quality since the signing of the *Callahan* v. *Carey* consent decree. This has had the inevitable effect of making the shelters more attractive to the poor who are at the margin of moving into the shelter. But obviously the solution to this problem is not to reduce the quality of the shelters, nor is it to turn away some of the would-be clients. Another, more humane, way must be found for "deterring" higher functioning clients from using the shelters as anything but a last resort.

The most sensible way of achieving this would be to institute a work requirement for all who are capable of working. SWP clients already are put to work on a wide variety of chores, some of which involve a high degree of responsibility. While these clients are among the more capable in the shelters, experience with them indicates that clients can do a good deal of useful work around the shelters. A work requirement—to be restricted, of course, to those without disabilities that prevent them from working—would help eliminate dependency among higher-functioning clients in two ways.

First, a work requirement would change the incentive structure of the shelters. The alternatives to the shelters—menial work and the welfare system—both require one to accept considerable responsibility. Menial work can require a fair degree of work discipline, and even welfare—which now requires that clients present themselves for periodic face-to-face interviews and which may impose work requirements of its own—in its own ways imposes certain responsibilities. The shelters, on the other hand, give out something for nothing: Clients get plenty of services and have to give nothing in return. A work requirement would mean that clients have to give something back. Clients would no longer be able to get a better deal by switching out of the marginal economy or the welfare system and into the shelters. A work requirement would eliminate one incentive for using the shelter without lowering the quality of shelter services.

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But more important than the incentive, a work requirement would change the atmosphere in the shelters—the way shelter personnel think about clients and the way clients think about themselves. If a work requirement were imposed, shelter clients would realize that the shelter system deliberately presents them with essentially the same responsibilities they would face outside the system. "Economic only" clients would realize that they were officially considered capable of ultimately functioning without the aid of the shelters. The expectation would be created that the higher-functioning clients will eventually be able to find their way out of the shelters. And this is exactly the sort of expectation we should want to create, both in the minds of the shelter workers and in those of the clients.

It turns out that, contrary to the claims of CSS, it is not true that "the problems of the homeless run deeper than the services which mental health and social service professionals can supply." The only reason for giving way to such despair is to discredit the welfare system altogether, and to set the stage for its replacement with a new system that will no longer embody such "invidious" concepts as individual responsibility. On the contrary, since the shelters should operate as bases from which the homeless are reintegrated into the appropriate social service programs, these very services turn out to be the answer to the problem of the homeless—in so far as one can speak of an answer. For the fact of the matter is that the homeless, like the poor, we will always have with us. The only question is how to help them without encouraging them in their pathologies and dependency. This is the central question of all welfare systems, but it is never raised by the advocacy groups except to dismiss its importance. It is time to insist on its relevance once again.

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A supply-side economics of the left

GEORGE GILDER

THE last five years have seen a major and unexpected shift in the continuing debate over American economic policy. After several decades of dominance by Keynesian macroeconomic concepts, the conservative microtheory, with its stress on incentives and their distortion by governmental policy, has increasingly set the terms of this debate. Particularly in the political arena, economic conservatives have been on the steady offensive, criticizing government policies—in the areas of taxation, spending, welfare, and regulation—for ignoring their acute and cumulative impact on the incentives of individuals and businesses.

The liberal response, though vehement and persistent, until recently has failed to achieve any sustained coherence or consistency. The Reagan administration's cuts in tax rates, halting though they were—and counteracted by tax increases mainly for social security—were first denounced as "wildly inflationary." Then the tax cuts were blamed for "huge structural deficits" that would prevent any significant decline in interest rates, and thus stifle any prospective economic recovery. And from the beginning critics attacked the Reagan program for favoring the rich by shifting the tax burden onto the poor.

The record, of course, has been quite different. Inflation has

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plummeted. Interest rates have dropped, despite regular increases in the projected structural deficit. And perhaps most startling to conventional economists, the tax burden actually shifted toward the "rich," as government revenues rose smartly in precisely those higher income brackets where the deepest real tax cuts were achieved. A movement out of tax shelters after the top rate dropped from 70 to 50 percent resulted in an 11 percent rise in tax payments from higher incomes in FY 1982. As measured by quarterly "estimated" and non-withheld tax receipts, tax payments of top earners rose from $76 billion in fiscal 1981 to $85 billion in 1982, despite an unexpectedly severe recession. Moreover, the rise in payments by "the rich" has accelerated with the stock market surge during the first two quarters of FY 1983.

So, although a worldwide recession has left the United States with serious and continuing economic problems, many of the initial liberal arguments against "Reaganomics" were not confirmed by events. And the nearly complete failure of contrary policies in France, despite far more favorable initial economic conditions, has further discomfited the critics.

A new, coherent response

Nonetheless, following publication of two books in the last year by Robert B. Reich, American liberals no longer can be said to lack a sustained and coherent alternative to the conservative economic theory and agenda.[1] A professor at Harvard's Kennedy School of Government and a former lawyer at the Federal Trade Commission, Reich has developed a broad and systematic theory of the role of governmental social and industrial policy in economic growth and progress.

Conventional liberal macroeconomists, however, will find little solace in his work. For Reich is an unremitting microeconomist, focusing almost exclusively on the particular effects of government policy on labor quality and mobility, management style and effectiveness, and industrial focus and strategy. Reich does not offer an adaptation of conventional Keynesian macroeconomics, but rather an ambitious new supply-side microeconomics of the left.

Like many economists, of whatever ideological slant, Reich begins with the assumption that the U.S. economy is gravely and

[1] Robert B. Reich, *The Next American Frontier* (New York: Random House, 1983); Robert B. Reich and Ira Magaziner, *Minding America's Business* (New York: Harcourt Brace Jovanovich, 1982).

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fundamentally awry. Lester Thurow, who preceded Reich with many of the key assumptions and insights of this movement, has repeatedly predicted a new Great Depression, and has offered a recitation of the fundamental problems of the U.S. economy—declining mathematical aptitude scores, a shortage of machinists, the familiar glut of lawyers—that diagnoses the death of American productivity "by a thousand cuts." [2] Reich repeats many of Thurow's strictures, and argues further that in contrast with our European and Asian rivals, the evolution of the U.S. economy toward advanced technologies and production systems has been "sluggish." "With each passing month," Reich maintains, "U.S. business loses more ground. Bankruptcies soar; inventories expand; the percentage of industrial capacity in operation declines.... [T]he U.S. economy is grinding to a slow painful halt."

Since writing his book, Reich continues to dismiss the current recovery as far too "anemic" to relieve any of the economy's most severe problems. With a continuing faith in the magic of aggregate demand, some Keynesians, such as Walter Heller, think that President Reagan has stumbled, despite himself, into a policy of deficits and easy money which could bring a powerful recovery. But such cyclical episodes mean little to Reich, Thurow, and their increasing band of prestigious followers who correctly focus on *long-term* economic health.

Inside the mind of American business

What Reich adds to Thurow's stimulating analysis in *The Zero-Sum Society* is a genuinely sophisticated and incisive appreciation of business organization and behavior in reaction to government policy. The analysis of management strategy in *Minding America's Business* is unequaled in scope and trenchancy by any other recent book on the subject. Availing themselves of the central concept of the learning curve, Reich and Magaziner offer a far reaching and detailed critique of the pricing, investment, marketing, and management practices of U.S. businesses competing with the Japanese.

In this analysis, the learning curve shows that expenses of all kinds decline predictably as more units are sold. The most successful companies in both the U.S. and Japan lower prices ahead of the curve in order to increase sales, thus expanding market share and lowering unit costs. Contrary to the popular rule, if you are

[2] Lester Thurow, *The Zero-Sum Society* (New York: Basic Books, 1981).

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losing money on every unit sold, you *can* make it up by volume. As *Minding America's Business* shows, Japanese companies have been proving this point for decades.

In *The Next American Frontier* Reich puts his strategic insights into a broader context of managerial history and social policy. The U.S., Reich maintains, is afflicted with a crippling and spurious division between our business and civic cultures. In the belief that social justice is inimical to economic growth, business opposes the expansion of the welfare state. In the belief that business success comes at the expense of social justice, liberals distrust and undermine business. Yet Reich argues that this division is entirely false. "Social justice," Reich contends, "is not incompatible with economic growth but essential to it." By distributing the costs of change fairly, the welfare state makes growth possible for a democracy in which established interests, threatened by progress, will otherwise turn to politics. Similarly, the success of business is indispensable to the creation of jobs and the financing of the welfare state.

The key problem of the U.S. economy, he maintains, is that mutual hostility between business and government has prevented the U.S. from adopting the integrated policies which have enhanced both productivity and distributive justice in Europe and Asia: "Americans concerned with social justice must become familiar with the subtleties of U.S. business and recognize the importance of profit seeking and investment to economic growth. American businessmen must accept that claims for participation and fairness are not obstacles to their mission, but ultimately its very substance."

According to Reich, the false dichotomies of U.S. politics spring from a conception of scientific management developed during the long era of American dominance in standardized mass production. Reich shows how the conditions of mass production—the breakdown of work into simplified movements, the division of labor into specialized crafts, the proliferation of rules and monitoring systems, the schism between administration and production, the adversary postures of management and workers—created a sclerotic hierarchy that is not well adapted to the demands of a new era.

As a result, the *mind* of American business—its strategic, financial, and administrative roles—split away from its *body*—the actual means and facilities of production.

As long as manufacturing processes were routinized and predictable, this split made sense. However, following a more elaborate presentation in *Minding America's Business*, Reich shows that this hierarchical structure is now self-defeating for the U.S. economy.

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Any company that succeeds in reducing its product to the mechanized systems of mass production also creates, by that very feat, the conditions for less costly manufacturing overseas. Capital and capital equipment are easily transportable in the contemporary era. Not only will Third World countries offer cheaper labor, they also may be closer to the sources of raw materials and the fastest growing markets. Reich and Magaziner argue that the U.S. should abandon such standardized manufacturing, which, according to the law of comparative advantage, will continue to reduce the standard of living for U.S. workers. They quote a Japanese official as saying, "We should hand down these industries to the Third World like children's clothes that no longer fit."

Toward knowledge-intensive industries

The goods in which the U.S. might command a comparative advantage in international trade, Reich suggests, are items produced through flexible systems of production, and involving immobile skilled labor and rapidly changing technologies: for example, sophisticated services, computers and their software, semiconductor chips and their customization, lasers and photonics, bioengineering and pharmaceuticals—all *knowledge*-intensive industries.

Success in all these industries would require a reintegration of the mind and body of American commerce; and for that, one needs managers with hands-on knowledge of the processes and technologies of production. American executives, however, tend to go to institutions like the Harvard Business School, where they study scientific management, but not materials science; the intricacies of finance, but not physical engineering; the subtleties of game theory in negotiation, but not the challenges of manufacture; and corporate law, but not the organization of the factory floor. (Their government counterparts pursue similarly abstract topics at places like the Kennedy School of Government.)

Rather than moving the U.S. onto the baffling frontiers of technology, our business and government leaders respond to the impasse of the American economy in the only way they know how—by emitting and manipulating paper. They become, in Reich's repeated litany, "paper entrepreneurs." Unable to create real assets, they shuffle paper assets in a symbolic economy of zero-sum maneuvering and legal and financial virtuosity. They shower the system with legal briefs and regulatory orders, merger and acquisition announcements (a record $82 billion went for this purpose in 1981), executive recruit-

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ing raids, and all the buyouts and leasebacks, stock and bond exchanges, "defeasances" and accounting finagles which preoccupy many American conglomerates. Some 40 percent of the chief executives of America's largest companies rise to the top through law or finance, and their average tenure is less than five years. As Reich contends, "The only general knowledge which they carry around in their heads, from one executive suite to another, concerns the manipulation of symbols and the abstract scrutiny of disembodied measures of firm performance."

As Reich shows, almost all this activity is irrelevant to the real-world challenges to U.S. business. As standardized mass production moves overseas, U.S. managers not only must understand flexible production technology; they also must collaborate with government and labor to create the skilled and flexible workforce needed to compete with European and Asian rivals.

Production policies vs. protection policies

According to Reich, the new conditions of commerce dictate that the coming years must be the "Era of Human Capital" for the U.S. The keys to success will be research, education, training, and social services designed to foster a resourceful, adaptable, flexible, and enthusiastic workforce in an economy capable of shifting swiftly among changing technical challenges. Because the marketplace denies to institutions which invest in human capital the ability to capture the returns, businesses always will tend to devote inadequate resources to education and training. Therefore this new age will demand positive and active government—indeed, it will require a comprehensive industrial policy to set priorities, develop strategies, penalize the shufflers of paper assets, negotiate the moves from "sunset" to "sunrise" industries, and develop the education and training, and social and human services needed for economic progress.

Without such policies, Reich believes, the established order of mass-production firms—from steel and autos to chemicals and rubber—will mobilize politically to thwart economic change. The "iron triangle" of management, labor, and local politicians (a concept introduced in *The Public Interest* by David Stockman, in slightly different form, six years ago) will secure a system of subsidies and protections to support declining industries and gradually enfeeble the entire system. Although these policies of "historic preservation," as Reich terms them, are often launched by liberals in the

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name of the blue collar workers and the poor, social justice is an early casualty of the protectionist state. In a typically pithy sentence, Reich observes that "the costs of industrial decline cascade down through the economy until they come to rest on groups too unorganized or too politically weak to pass them on." Key victims, beyond the disarrayed poor, will be the unborn firms of the future.

During the course of this argument, Reich presents the most cogent case against protectionism to be found in recent economic literature. At a time when many Democrats are developing evermore sophisticated rationales for protection, and when the Reagan administration, under the guise of "voluntary" quotas, is beginning to capitulate to the iron triangle, Reich's blunt arguments for freer trade are timely and courageous. He exposes the endless linkages in the vicious cycle of protectionism which, in the end, brings intensified foreign measures against the sophisticated goods on which the U.S. future depends.

The realities of productive life

There is good reason to celebrate this new turn in the ideological focus of a key Democratic party intellectual, and to hope that Reich can add to his following many other leading politicians and bureaucrats of his party. Reich also seems to have some understanding (though not much more than that) of the reasons for the catastrophic failure of liberal welfare policy which, by focusing benefits on people who neither work, nor save, nor maintain their marriages, has promoted the emergence of an ever-growing underclass.

Yet for all his shrewd insights and smooth prose, all his sophisticated knowledge of business and law, Reich does not understand the economic realities of productive life. The conclusions of his books finally rest on a series of assumptions, shared by most of his liberal colleagues on the circuit between Cambridge and Capitol Hill, which are almost totally unfounded.

Both the Reich books begin with the proposition that the U.S. economy has been outperformed in recent decades, not only by the Japanese, but also by the Europeans. According to Reich, U.S. productivity growth has been slower, our labor force less flexible, our job creation less effective, our shift to high technology less swift and sure, our per-capita GNP and standard of living lower, and our longevity less than such countries as Germany, France, and

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Sweden. And we fell behind despite the fact that our tax rates have been lower, our income distribution less equal, and our government spending smaller as a share of GNP.

Without engaging in an extended analysis of the murky international data, let it be said that Reich ignores a large body of evidence directly contrary to his assertions. Comparative analysis of purchasing power shows U.S. living standards substantially higher than our European and Japanese rivals. When one compares longevity after age 60 in Europe to that among white ethnic groups in the U.S., one finds that our health care is superior by relevant standards of comparison.[3] For every income distribution table which shows greater equality in Europe, there are tables which show more equality in the U.S.[4] The truth is that all such static measures lose their meaning across national boundaries since they are strongly influenced by exchange rates, demographic changes, changes in family structure, definitions of income and taxation, and a host of other elusive viriables. It is more important to focus on dynamic indicators, such as the fact that 46 percent of the members of the top income quintile in the U.S. leave it within seven years, while a similar share of the bottom quintile moves up.[5] Static snapshots of the income distribution tell us less than they seem to.

Is the U.S. outperforming Europe?

Leaving aside Japan for the moment, the key to Reich's specific charges is his assumption that European countries, benefiting from sophisticated human capital and industrial policies, have outperformed the U.S. in the realms of employment, productivity, and movement into high technology. Unfortunately these claims have no obvious foundation. During the 1970s, for example, the U.S. economy produced a net gain of 19 million new jobs, while the EEC countries created no net new jobs at all. (In fact, Germany ended 1980 with 2 percent less employment than in 1970.) U.S. employment grew five times as fast as France's and three times

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[3] World Health Organization, *World Health Statistics Annual: 1982, Vital Statistics and Causes of Death* (Geneva, 1982), pp. 452-53; U.S. Bureau of the Census, *Statistical Abstract of the United States: 1982-83* (103rd Edition) Washington, D.C. 1982, Table 107, p. 72.

[4] See, for example, Sylvia Ann Hewlett, *The Cruel Dilemmas of Development* (New York: Basic Books, 1980), p. 320.

[5] Greg J. Duncan, "An Overview of Family Economic Mobility," *Economic Outlook* 8, Number 2 (Spring, 1981).

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as fast as Japan's. Even U.S. manufacturing employment rose by one million jobs, while Japan's manufacturers *reduced* employment by 11 percent.[6] While the U.S. economy absorbed a baby-boom population bulge that did not occur in Europe, and accommodated an estimated 12 million legal and illegal immigrants, the EEC countries stopped the influx of overseas workers and payed hundreds of thousands to return to their homelands.

All the productivity data cited by Reich are swamped by these demographic differences. While the U.S. workforce was flooded with new and untrained workers, U.S. capital formation suffered from high taxation throughout the decade. Consequently, it is not surprising that capital formation per employed worker dropped, as did productivity growth. The U.S., as Reich and Magaziner themselves document, performed worst in capital intensive industries such as steel and autos, did best in knowledge intensive activities such as computers and software, and created millions of new jobs in labor intensive services such as fast food, health care, and residential construction.

This pattern corresponded perfectly with the availability of resources, chiefly labor and technology, and the incidence of taxation, which is heavily focused on capital. With the real tax rate on interest averaging over 100 percent throughout the decade, new capital was scarce; and given an array of subsidies for housing, more than a third of gross savings that did exist went for residential construction.

But since the government failed during this period to figure out an effective way to tax knowledge, knowledge industries thrived. Because the government also failed to find a way to measure the productivity of the knowledge-intensive and entrepreneurial industries in which the U.S. specialized, official productivity statistics sagged. Washington statisticians were entirely at a loss to calculate the huge productivity gains and cost reduction in these computer-related industries and entrepreneurial companies which were launching entirely new goods at ever lower prices. While the economy as a whole seemed to be worsening, the U.S. balance of trade with Europe in knowledge-intensive goods sharply improved throughout the decade.

Reich's praise for the superior performance of the European economies in moving from "sunset" to "sunrise" activities rests on

[6] U.S. Bureau of the Census, *Statistical Abstract of the United States: 1982-83* (103rd Edition) Washington, D.C., 1982, Table 652, p. 390; G.C. Allen, *The Japanese Economy* (New York: St. Martin's Press, 1981), p. 155.

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deceptive productivity data—data which in fact reflect the faster movement of the U.S. economy in precisely the direction he recommends. Between 1977 and 1982, for example, employment in computer-related manufacturing rose from 50 percent of employment in auto manufacture to 140 percent; jobs in communications rose by a third; computer software companies multiplied by the thousands every year; and over the last 24 months the number of retail outlets for computers rose from a few hundred to 37,000. Since the productivity statisticians systematically miss the *real* efficiency gains in the production of new goods of rapidly increasing quality and declining prices—and continue to calculate the productivity declines resulting from low utilization of capacity in "sunset" companies—the transition appears in the data as a decline in U.S. productivity. Because the productivity analysts miss the concealed waste in the continued production by European heavy industry (steel alone was subsidized by $33 billion in the last eight years) and because European social policies disguise unemployment by evicting the unemployed, European statistics have only seemed better.

What in fact has been occurring in Europe is the "crisis of the welfare state" predicted five years ago by Richard Rose and Guy Peters.[7] In Sweden, the most advanced welfare state, the average marginal tax rate is over 60 percent and the deficit stands at 12 percent of GNP and is rising. France and Germany are suffering from the same disease in a milder but still serious form. The industrial policies that captivate Reich—including low and nonexistent taxation of established companies and helter skelter subsidies for hi-tech experiments and heavy industry employment—have failed to halt the decay in the EEC. But if the European economies have failed to outperform the U.S., despite all the American errors and foibles so forcibly documented by Reich, then it is hard to understand why we should imitate their overblown welfare and industrial policies.

The case of Japan

Japan is a radically different case. Although clearly not a paragon of laissez-faire or free trade, for the entire 24 year period of its most rapid growth Japan maintained the lowest tax rates, lowest

[7] Richard Rose and Guy Peters, *Can Government Go Bankrupt?* (New York: Basic Books, 1978).

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welfare benefits, and lowest level of government spending in the industrialized world. Japan also achieved levels of savings and capital formation near double those of the U.S. Contrary to the image of an economy dominated by giant cartels and controlled markets, Japan's economy has accommodated more intense domestic competition than ours: for example, 12 auto firms, 12 mainline steel manufacturers, 48 calculator firms, and 147 robotics companies. Relative to its population, Japan also generated far more new small businesses, and *seven times* as many small manufacturing firms as did the U.S.[8] Japan's greater availability of capital, its entrepreneurial vitality, and its disciplined workers have allowed it to make spectacular gains in many fields: It now dominates consumer electronics, certain advanced semiconductor memories, and industrial robotics.

In the view of Reich and many other advocates of a U.S. industrial policy, this surge of creativity, growth, and productivity stems not from any of these obvious sources, but from the industrial plans and subsidies administered by a small group of experts in the Ministry of International Trade and Industry (MITI). In a brilliant work of sustained and resourceful scholarship, Chalmers Johnson has amply demonstrated that MITI is an institution of strategic potency and intelligence far exceeding its European counterparts.[9] Although Johnson stresses industrial policy, it is worth noting that two of MITI's key leaders during the first phase of the Japanese miracle, beginning in the mid-1950s, were ardent protagonists of supply-side tax cuts. Under Tanzan Ishibashi and Hayato Ikeda, Japan effectively eliminated taxes on interest and slashed most income tax rates by 30 percent *in one year*. There is no doubt that this policy was effective in reviving Japanese savings and entrepreneurship.

But MITI's record in managing the movement of the Japanese economy from one industry to another seems mixed at best. Even in Johnson's enthusiastic account, early successes in such obvious tasks as restoring Japan's war-ravaged heavy industries (chiefly steel and shipbuilding) must be balanced against a feckless effort during the 1960s to consolidate Japan's auto industry into two giant conglomerates patterned after Ford and GM. MITI did offer some rhetorical and financial support to the superb efforts of Jap-

[8] Robert Wood, "Where Small Companies are Important," *Inc.* (November 1981): 74.
[9] Chalmers Johnson, *MITI and the Japanese Miracle* (Stanford: Stanford University Press, 1982).

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anese firms and entrepreneurs in consumer electronics, robotics, and semiconductors, but in general this support—smaller in most cases than U.S. space and Pentagon subsidies—has been too little and too late to be decisive. By the time MITI developed its robotics policy, for example, there were already 137 Japanese robotics firms; by the time it favored consumer electronics, the Japanese were already selling millions of transistor radios. By the time the Japanese government began the famous VLSI (very large scale integration) semiconductor project in the late 1970s, Japanese companies were already on the verge of capturing 40 percent of the U.S. market for dynamic random access semiconductor memories; in fact several companies outside of MITI's embrace—including Oki, Sharp, and Matsushita—have succeeded in making significant breakthroughs in advanced semiconductor products.

Capturing a share of the "global tax-base"

Reich's book is an excellent critique of many facets of U.S. policy. He is correct to stress the role of government in creating a favorable environment for economic growth and change, and many of his ideas and proposals—from a progressive consumption tax for the promotion of savings, to educational vouchers usable for vocational training as well as college study—are worthy of serious consideration. To the extent that "industrial policy" serves as a more politically effective strategy for combating protectionism and promoting industrial change, we must wish its advocates luck. But Reich fails to demonstrate that a greater politicization of economic life, combined with a more ample array of welfare subsidies, would amount to anything but a greater obstacle to progress.

By focusing on the managerial and directive aspects of government policy, Reich missed an inviting opportunity to merge his insights on business strategy, founded on the learning curve, with his proposals for a national policy based on the synergy between social justice and economic growth. He fails to recognize that goverment, no less than business, cannot simply mandate its returns, and that its capacity to promote economic growth and social justice is limited by the pricing of its goods and services on the learning curve. Government prices are tax rates. If they are too high, people learn to avoid them; if government services are offered in inefficient forms and limited volume, they will cost more than they are worth. But the government will not then learn to lower its costs as any business must in order to survive.

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If costs are excessive, tax rates will also become excessive, and when tax rates are excessive they yield less revenue. Taxes operate in the same way that excessive prices do. Excessive prices in business tend to lower total sales, to limit market share, and to induce new entries into the business or new substitutes for the product. An excessive price of government—an exorbitant tax rate—will similarly lower total revenues and the tax base, and induce a proliferation of substitutes for taxable activity: "paper entrepreneurialism," tax shelters, overseas tax havens, emigration to low-tax areas, movement to the underground or irregular economies, leisure activities, collectibles, and real estate manipulation. In an economy where the rich withdraw from productive investment several consequences follow: Opportunity declines, the gap between the rich and poor widens, social services decay, and "social justice" becomes a cry of envy rather than an economic reality.

In crucial respects, governments are large businesses operating in a variety of intensely competitive markets, and subject to the same price rules other economic entities face. The government's income is dependent on its share of the "market"—that is, the portion of world enterprise which submits to taxation. This measure, which might be termed the share of the "global tax-base," reflects a government's success in fostering taxable economic activity within its jurisdiction or attracting productive businesses and individuals into it. As in business, market share stems more from developing one's own markets than from taking the markets belonging to others.

Like any other form of market share, tax-base share is determined by the price and quality of the goods and services offered and by the growth of the market served. A government will increase its revenues to the extent that its goods and services are attractively priced, and to the extent that the package of prices and services enhances the growth of the market. As Reich understands, *all* governments, regardless of political ideology, are necessarily caught in a global rivalry of economic management. They compete with other governments around the world in producing goods and services—from roads to pensions—and offering them at a price that simultaneously enhances tax-base share and the business-market share in the world economy.

The success of the Japanese tax cut strategy is incontestable in this regard. Government revenues *in absolute terms and as a share of world taxes* grew faster in Japan than in any other major nation, while government revenues *as a share of GNP* remained low-

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est.[10] The lowest tax rates brought in the highest revenues. For some three decades Japan has been the world's cheapest producer of government goods and services, has offered them in a superior package of quality, price, and sequence, and has maximized its total profits. The result, in other terms, was that the total value of Japan's government output, measured in constant dollars of government spending, rose faster than that of any industrial country. Moreover, according to most measures, incomes in Japan were more equally distributed than in nations taxed more progressively.

Because Reich does not acknowledge the real constraints on government policy, the stern critical intelligence he brings to bear on business escapes him when he contemplates social spending. Pages of *The Next American Frontier* are filled with shopping lists of desirable measures for government: Expand technical education, but don't forget the liberal arts; expand welfare spending by both government and business; rebuild infrastructures and subsidize industries; eliminate pollution; reduce crimes and accidents; provide security against financial and medical disaster; etc. All these measures, we are assured, will more than pay for themselves by promoting economic growth and fostering technological progress. Until the advocates of industrial policy fully comprehend the costs as well as the benefits of the measures they propose, their analysis will remain just another if more plausible rationale for succumbing to the always powerful constituencies of big government.

The *new* New Industrial State

Reich's deepest misconception, however, is his belief, inherited from John Kenneth Galbraith, that the dynamic force of growth in the new age of modern technology is big business. Almost all of Reich's criticisms of American enterprise focus on the top *Fortune* 200 companies. It is because of their blindness to the dynamism of U.S. entrepreneurship, which reached unprecedented levels of business starts and venture capital investments over the last two years, that major economists can actually believe that the U.S. economy is sluggish in adopting new technologies and is headed for a period of stagnation. Except for the even more entrepreneurial economy of Japan, the U.S. still leads the world in the creativity and productivity of its system; and with millions of

[10] OECD, *Revenue Statistics of OECD Member Countries, 1965-1981* (Paris: 1982), p. 83, Table 32.

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entrepreneurs, the U.S. is embracing the future far more aggressively than are its rivals.

At a time when Reich and his allies are bewailing the plight of the U.S. semiconductor industry, for example, Micron Technology, a three-year-old firm in Boisie, Idaho, has just surpassed all the large firms in the world—and the industrial policies of Japan, Britain, France, and Germany—by creating the smallest and cheapest random access memory chip. Scores of other U.S. companies that scarcely existed when Reich began his first book are now solving the very problems he so vividly and incisively depicts. This is not the "myth" of entrepreneurial redemption that Reich derides. It is the paramount imperative of the economic growth, progress, and social justice he seeks and celebrates.

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The MITIzation of America?

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From half a dozen Democratic study groups, caucuses, a think tank, and—more indirectly—from statements by several Democratic presidential hopefuls, a new theme is rising: industrial policy. It calls for the next Democratic administration, in consultation with business and labor, to formulate a set of industrial priorities. Chosen industries (high tech, especially computers, usually lead the list) are to be showered with public funds and benefits. Losing industries (autos and steel, for example) are to be "sunset" and their workers moved to other industries after "retraining." (Some suggest reconstructing the losing industries—with public funds and guidance—to become winners.) In these ways the government is to help American business adapt more rapidly to the changing technological environment and to the competitive world overseas. An often repeated line is, "We did Japan and Germany a favor by bombing out their steel mills; now we must take out our own obsolescent ones."

The model that several proponents of industrial policy seek to emulate is Japan. The Ministry of International Trade and Industry (MITI) of Japan is credited with successfully managing Japan's economy as if it were one corporation. Hence references to "Japan, Inc.," and a standard question from the left: "If corporations have

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a planning committee, what's wrong with having one for the U.S.?" Indeed, the MITIzation of America is openly advocated.

One American version of MITI calls for the Department of Commerce to be transformed into a Department of Trade and Development, with a desk and a trilateral committee (made up of government, business, and labor) for each industry, from ball bearings to shoes. Each desk would analyze its industry and determine whether it had a promising future in terms of productivity, export potential, technological innovation, labor intensiveness, "added-value," and other such criteria. The industries ranked at the top would be granted whatever they need to thrive, based on trilateral consultations. ("Consensus" is another Japanese characteristic the new industrial world is to emulate.)

The people who most explicitly call for an industrial policy based on identification of winners and losers are the left-liberal Gar Alperowitz, co-director of the Center for Economic Alternatives, and Arny Packer, an Assistant Secretary of Labor in the Carter administration. Robert Reich, a former planning director of the Federal Trade Commission and currently a professor at Harvard's Kennedy School of Government, is widely considered the spokesman for Democratic industrial policy. A book he co-authored with Ira C. Magaziner, *Minding America's Business*, is often cited in discussions of industrial policy. Reich does not use the terms "winners" and "losers" and objects to being identified with the Alperowitz-Packer position. Nevertheless, he does call for identifying and assisting those industries with a "high added-value."

Reich never clearly defines what "high added-value" is. The problems in predicting which industries will have a high added-value in the future are similar, if not identical, to those of picking winners and losers. Indeed, in their book, Magaziner and Reich talk about "declining" and "growing" businesses as if there were labels pinned to their smokestacks or written on their laboratory flat-roofs. While it might be relatively easy to tell who is currently on the decline, this is by no means an easy business to predict. Losers turn into winners in a few short years, and vice versa, a catch Reich and others ignore.

As I see it, America cannot be MITI-ized, nor should it be. Before indicating why, I ought to make it clear that the Democratic Party has not adopted the idea as part of its platform or official policy, both because Democrats are still actively debating the idea and because the 1984 elections still seem far away. Now, before a commitment has been made, is the best time to raise questions

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about industrial policy. (Republican readers may feel that they could not care less—or would even find it welcome—if the Democrats lock into a wrong-headed strategy. But there is always a certain statistical probability that the Democrats will win, and the last thing the country needs is another round of experimentation with faulty economic theory.)

The cultural gap

Before evaluating what MITI has to offer America, we ought to ask how well it has done for Japan. In the mood of self-flagellation which prevailed on these shores in the late 1970s, Japan was credited with almost unbelievable prowess. For instance, Harvard sociologist Ezra Vogel found Japan first not only in economic achievement, but also in education, crime control, equality of income distribution, environmental protection, and health. The guiding spirit in this account—the consensus-builder, the administrator-coordinator, the promoter of productivity, export, research and development (R&D), good labor relations and wise investment decisions—is, you guessed it, MITI.

Others disagree. They point to MITI failures. For example, in 1955 MITI wanted Japanese auto makers to concentrate on a single car model, the "People's Car," and it took lobbying in the Japanese parliament to allow the auto makers to keep a more varied line, which has been part of their marketing success. Not long before, MITI officials had told Japanese auto makers not to waste resources trying to export—on the assumption that they could never penetrate foreign markets! In the 1960s, Honda and Mitsubishi succeeded by staying out of MITI-guided cartels and going it alone. More recently, Japan's MITI-ized steel mills have been operating for years at 70 percent of capacity.

But more to the point, whatever MITI does or does not do for Japan, it cannot be Xeroxed and shipped to the U.S. Major institutions do not travel well across international boundaries. It suffices to remember that our Constitution has been copied by some of the republics of Latin America, which have frequently used it to impose the rule of generals, not to sustain democracy. Japan is a far more homogeneous society than the U.S., and its people have a strongly shared national mentality, fostered by a sense of vulnerability due to their isolation and the absence of most natural resources. They pull together much more readily than do the people of continent-sized, pluralistic America. Executives in Japan often

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have secure, lifelong employment commitments. Many employees live on corporate campuses and many labor unions are, in effect, company-controlled. To put it succinctly, there probably is not a major industrial country from which the U.S. can copy *less* than from Japan.

The essential feature of MITIzation is that it presupposes an intensive and extensive role for government in planning and managing the economy. Nothing could be further from the political philosophy to which most Americans subscribe. The American antipathy for government, and the corresponding belief in individualism, competition, and the marketplace, go back to the days of the founding. In recent years, in a reaction to the liberal decades of the New Frontier and the Great Society, these beliefs have been strongly reaffirmed. After all, not just Reagan but Carter, too, rode on an anti-big-government wave. If Reaganomics fails, some backlash may develop, which could carry us either to *greater* opposition to government, or to some new willingness to draw on it for economic revitalization. But I cannot imagine that by 1984 or 1988 the public will embrace a MITI-ized economy. To advocate it is, at least politically, a losing proposition.

The political gap

Nor is a MITI compatible with the way America is governed. In Congress we find a strong expression of local interests and, increasingly, of other special interests. We may leave to another occasion the question whether this makes for a wholesome, pluralistic, representative system or for a semi-corrupt PACed Congress. The fact is that a national economic plan cannot be formed and implemented under our political institutions, if it can be done at all. When our social engineers wanted to test the Model Cities plan in six sites during the 1960s, members of Congress, long before the data were in, demanded the program for "their" cities, extending it to 75, soon 150, cities. The Economic Development Administration was to allot funds for selected economically depressed counties; soon, under Congressional pressure, 84.5 percent of *all* U.S. counties qualified, turning the program into an open pork barrel and completely defeating its purpose. Essentially the same thing happened to Trade Adjustment Assistance and to the tax code, the latter becoming so riddled with special favors that some have proposed turning to a flat rate tax.

Moreover, the "losing" industries are usually the oldest and

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best-established ones, and therefore have the most political influence, while newer, more innovative industries often have relatively little. Bio-engineering is lost among the farm, bank, labor, real estate, steel, and auto lobbies. Thus the American political process tends to channel resources to obsolescent industries, to the relative neglect of the new, with-it ones. President Carter's short-lived 1980 economic revitalization drive started with the auto and steel industries—both obsolescent and in need of being scaled back—not because his staff believed they were the engines of America's future, but because their labor unions were flirting with the idea of endorsing Senator Kennedy.

It has been suggested that the American MITI, like the Federal Reserve, would be an independent authority, insulated from Congress. But would Congress agree to keep its hands off a comprehensive national planning and management agency? And could the economy run if we had *two* economic policy-making institutions independent from one another—and from general national policy making? (Some feel one is too many.) Sometimes the bark of the proponents of industrial policy is worse than their bite. Reich calls for "government management" of capital markets, which is enough to drive most American businessmen, investors, and voters up the wall (and over it, to relocate overseas). Actually, he does not quite mean a government-run investment decision-making apparatus for the American economy, only introduction of "public investment criteria" into allocations of loan guarantees, insurance subsidies, and tax and credit subsidies.

The knowledge gap

Other advocates of industrial policy, such as Lester Thurow and Felix Rohatyn, are much more moderate. They favor directing *some* capital to where it is needed—perhaps through a Reconstruction Finance Corporation (RFC) on the order of $50 billion a year —which is a long way from "managing the American capital market." Indeed, the size of the intervention is as important as its tightness of grip. A small RFC might be wasteful, a nuisance, a symbol of relying on government rather than the market; a major one would constitute an attempt to plan the economy through a central financial authority. Gar Alperowitz, for instance, recently called for "coordinated overall planning." Recognizing that this notion is not very popular, he has returned to an old-left chestnut, expecting the forthcoming crisis to raise people's "consciousness."

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He writes, "Probably the new approach will have to linger on the sidelines . . . until the economic disarray explodes into crisis and the people demand that something be done."

Last but not least, the identification of "winners" and "losers," the cornerstone of industrial policy, is a near-impossible task. To identify a winning industry requires predicting the future, determining what product line will succeed, taking into account future technological developments, changes in the general level of economic activity, actions by our competitors, and so on. The fact is that American industries that in the past were considered sure losers—textiles, shoes—have become winners, *without* industrial policy, and an industry that until recently seemed an American winner —airplane manufacturing—may turn sour (and then again may not). It is hard to foretell. I find it very revealing when people who put their faith in forecasting do not engage in studies of the validity of past forecasts. (Do not trust a broker who will not provide —or keep—a performance record.)

At one point Magaziner and Reich announce that, "the governments must be capable of distinguishing between major structural declines and temporary problems that can be overcome with adequate funding." Maybe they must, maybe they do not—but *can* they? So far as one can tell from historical and anecdotal information, and as the preceding examples illustrate, successful long-run identification of winners or losers is beyond our current intellectual and technical capacity.

Learning from the American experience

All this does not mean that the only alternative is to sit back and await the results of the vicissitudes of the marketplace. As long as there is a government (even for defense only) there will be a tax system and public policy decisions as to how to distribute its burdens, not only among various social groups, but between consumption and investment and production. (For instance, shall there be a tax on corporations or only on individuals? On capital gains or only on earned income?) Similarly, monetary policy and the level of government activities, especially deficits, affect the availability of credit to the private sector. In effect, both the tax and the credit systems are used daily by the government—including the Reagan administration—to transmit national priorities to the economy.

These sorts of signals differ from those sent by MITI in that they

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are economic incentives, not administrative decrees, regulations, or public financing. Moreover, these incentives are focused on wide sectors of the economy, not specific industries. For example, to favor investment in capital goods over collectibles and residential real estate (as most items of the 1981 Economic Recovery Act do) is not to favor tin over silver, or slurry pipelines over railroads. Because they are broad, these incentives are much less subject to political pork-barreling; most political corruption enters when economic incentives are tied to a narrow, specific constituency. In addition, they can work well even if we cannot forecast precisely. To favor R&D in general, for instance, does not require forecasting *which* specific R&D projects, or even which line of investigation, will "win," or which new technology will pay off.

A major study of "industrial innovation policy" published in *Science* illustrates the point.[1] The authors identified three ways the U.S. government historically has supported R&D. Before one rushes to condemn all government support for R&D it should be noted that a good part of this support is directly related to U.S. national security. And all but the most extreme free market purists recognize the need for the government to support some shared goods which have no profit potential, among which basic scientific research ranks second only to defense. Support, of course, does not mean government administration, production, or control. Support of R&D currently takes the form of appropriation of needed funds. The question under study is what kind of government guidance—if any—should be built into the ways the funds are allotted.

The study found two ways that worked well and one that clearly does not. Support for items in which the government has a "strong and direct procurement interest" (e.g., missiles) works well, as does support for "generic" research *between* basic and applied (e.g., accelerating the transition of basic work in chemistry and biology to applied R&D carried out by the private sector). What "unequivocally" did *not* work, say the researchers, is the government's trying to "pick winners." In the SST project and Operation Breakthrough (a HUD housing development), the government "did not attempt to create a framework in which scientific and user interests could guide allocation; rather than federal agencies attempting to insert themselves directly into the business of developing particular technologies for a commercial market in which they

[1] Richard R. Nelson and Richard N. Langlois, "Industrial Innovation Policy: Lessons from American History," *Science* (February 18, 1983): 814-818.

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had little or no procurement interest." This "targeted" form of support for R&D failed, while the indirect—or *semi*-targeted—approach worked quite effectively.

All specific economic decisions can be left to the private marketplace within a framework that encourages what I have called reindustrialization—that is, shoring up the infrastructure and capital goods sectors, the sectors favored by the first industrialization of America. Others may call such an approach "industrial policy II" or "MITI-minus." By whatever name, such an economic policy may foster American economic reconstruction, as long as it does not look like or attempt to work like MITI in Japan. Incentives and broad-gauged signaling of priorities might help; national planning and managing the economy will not.

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Dealing with the high-rate offender

JAMES Q. WILSON

WHEN criminals are deprived of their liberty, as by imprisonment (or banishment, or very tight control in the community), their ability to commit offenses against citizens is ended. We say these persons have been "incapacitated," and we try to estimate the amount by which crime is reduced by this incapacitation.

Incapacitation cannot be the sole purpose of the criminal justice system; if it were, we would put everybody who has committed one or two offenses in prison until they were too old to commit another. And if we thought prison too costly, we would simply cut off their hands or their heads. Justice, humanity, and proportionality, among other goals, must also be served by the courts.

But there is one great advantage to incapacitation as a crime control strategy—namely, it does not require us to make any assumptions about human nature. By contrast, deterrence works only if people take into account the costs and benefits of alternative courses of action and choose that which confers the largest net benefit (or the smallest net cost). Though people almost surely do

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take such matters into account, it is difficult to be certain by how much such considerations affect their behavior and what change, if any, in crime rates will result from a given change in either the costs of crime or the benefits of not committing a crime. Rehabilitation works only if the values, preferences, or time-horizon of criminals can be altered by plan. There is not much evidence that we can make these alterations for large numbers of persons, though there is some evidence that it can be done for a few under certain circumstances.

Incapacitation, on the other hand, works by definition: Its effects result from the physical restraint of the offender and not from his subjective state. More accurately, it works provided at least three conditions are met: Some offenders must be repeaters; offenders taken off the streets must not be immediately and completely replaced by new recruits; and prison must not sufficiently increase the post-release criminal activity of those who have been incarcerated, thereby offsetting the crimes prevented by their stay in prison.

The first condition is surely true. Every study of prison inmates shows that a large fraction (recently, about two-thirds) of them had prior criminal records; every study of ex-convicts shows that a significant fraction (estimates vary from a quarter to a half) are rearrested for new offenses within a relatively short time. Thus, time off the street is time deleted from the criminal careers of persons, some large portion of whom are repeaters.

The second condition seems plausible. Some persons, such as Ernest van den Haag, have argued that new offenders will step forward to take the place vacated by imprisoned offenders, but they have presented no evidence that this is the case. For certain crimes organized along business lines—such as gambling, white-collar crime, narcotics trafficking, and perhaps prostitution—it is likely that replacements are recruited or that offenders have the ability to keep competition off the streets. But it seems unlikely that this process operates with ordinary street crime and familial violence. For burglary, robbery, auto theft, assault, and murder, there are no barriers to entry and no scarcity of criminal opportunities. The supply of robbers is not, at present crime rates, affected by the "demand" for robbery—that is, by the number of persons acting in ways that invite robbery.

The third condition—that prisons do not serve as such successful "schools of crime" that either the ex-convict's annual rate of offending is increased or the length of his criminal career is extended—

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is probably met, though a debate rages over this point. It is undoubtedly true that, for some prisoners, prison is a school for crime. It is also undoubtedly true that for some inmates it is a deterrent. The question is whether the schooling effect substantially outweighs the deterrent effect. The evidence gathered by students of rehabilitation—that prisons do not reduce an individual's subsequent crime rate—is also evidence that it does not increase it very much either. Even more compelling are the interviews with prison inmates undertaken at the Rand Corporation that suggest there is little relationship between the number of crimes an inmate has committed and whether he has ever been in prison before.[1] In any event, no one has shown that the (possible) increase in criminality resulting from imprisonment is enough to cancel out the reduction in crimes achieved by imprisonment.

Searching for individual crime rates

The debate over incapacitation is today chiefly a debate not over whether it works at all, but whether it works by enough to have a measurable effect on the crime rate at an acceptable cost. There have been some important recent reports from Rand that bear on this issue and there shortly will be appearing a major study on incapacitating the dangerous offender, from a Harvard group headed by Susan Estrich, Mark H. Moore, and Daniel McGillis. What follows here will add little to what these scholars have said, but it will serve to explain how one goes about trying to estimate the effects of incapacitation, provide an intellectual history of the question, and supply some comments about the unresolved issues that now surround it. In particular, it will address a turn in the debate toward what to some seems the most promising, and to others the most threatening, application of that strategy—namely, selective incapacitation.

To determine the amount of crime that is prevented by incarcerating a given number of offenders for a given length of time, the key estimate we must make is the number of offenses a criminal commits per year free on the street. If a community experiences one thousand robberies a year, it obviously makes a great deal of difference whether the robberies are the work of ten robbers, each of whom commits one hundred robberies per year, or the work of one thousand robbers, each of whom commits only one robbery per year. In the first case, locking up only five robbers will cut the number of robberies in half; in the second case, locking up one

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hundred robbers will only reduce the number of robberies by 10 percent.

In the first edition of *Thinking About Crime*, I reported, in the concluding chapter, on the work that had just been completed by Shlomo and Reuel Shinnar in which they produced an elegant mathematical formula for estimating the crime-reduction potential of incapacitation under various assumptions. Their key assumption was that the average rate of offending—that is, the number of crimes committed by the average criminal per year free—was ten. On the basis of this assumption and others, they estimated that the street robbery rate in New York State would be only one-fifth what it was in 1970 if every person convicted of such a crime spent five years in prison.[2]

About the time the Shinnars published this argument, other scholars were appearing in print with estimates of the individual offense rate that were much lower than ten. David Greenberg, using various methods, estimated that the average offender commits something on the order of two serious offenses per year.[3] Based on this estimate, Greenberg concluded that if society were to increase the length of the average prison sentence by one year (it is now two years), we would cut the rate of serious crime by only about 4 percent. Stevens Clarke undertook to calculate the incapacitative effect of prison on juvenile offenders (Greenberg had been concerned with adults) and decided that, at least in Philadelphia, the proportion of all serious crimes averted by the present sentences given to young offenders was no more than 4 percent.[4] Stephan Van Dine and his colleagues at the Academy for Contemporary Problems made an estimate of the crime-reduction effects of imposing a five-year prison term on all persons convicted of a felony in one county in Ohio, and concluded that this stringent policy would reduce violent crime by only 4 percent.[5] Since so many different critics were arriving at similar low estimates of what incapacitation might produce, many persons began questioning the large crime-reduction effects claimed by the Shinnars.

At this point, the matter was taken up by a panel of experts appointed by the National Research Council (a part of the National Academy of Sciences). Jacqueline Cohen of Carnegie-Mellon University prepared, at the invitation of the panel, a careful analysis of the competing claims of various scholars. She concluded that Greenberg and Clarke both "underestimate the individual crime rate."[6] Reexamining Clarke's data under more reasonable assumptions, Cohen decided that the proportion of serious crimes

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averted by present imprisonment rates for juveniles was two to three times larger than that estimated by Clark and, by implication, the number of crimes that could be prevented by increasing the use of prison would also be much higher. Similarly, Greenberg made some questionable assumptions, as well as an error in his calculations, that rendered his estimates of dubious value, but there was no easy way to revise his calculations to provide a better estimate.

Though the panel did not deal with the Van Dine estimates, other scholars did. Three separate articles were published pointing to a fundamental error in the Van Dine calculations. In their rejoinder, the Van Dine group, in effect, conceded the correctness of the criticism and in subsequent published work revised their estimate of the incapacitation effect upward.[7] What they had originally done was to assume that the persons arrested in Ohio had committed only the crimes for which they were charged and that the only additional crimes that would be averted by sending them away to prison for long terms would have been those other crimes for which they had previously been arrested. They assumed, in short, that these offenders never committed any crimes that did not lead to an arrest. Since this was obviously untrue, their original, very low estimate of the crime-reduction effect of incapacitation had to be in error.

Cohen and the panel concluded in 1978 that the most important research task confronting persons interested in incapacitation was to obtain better estimates of individual offense rates.[8] A major step in that direction was taken the following year with the publication of a new estimate, the most sophisticated to date, of those rates. Working with individual adult criminal records of all those persons arrested in Washington, D.C. during 1973 for any one of six major crimes (over 5,000 persons in all), Alfred Blumstein and Jacqueline Cohen suggested that the individual offense rate varied significantly for different kinds of offenders. For example, it was highest for larceny and lowest for aggravated assault. But they also found, as had other scholars before them, that there was not a great deal of specialization among criminals—a person arrested today for robbery might be arrested next time for burglary. The major contribution of their study was the ingenious method they developed for converting the number of times persons were arrested into an estimate of the number of crimes they actually committed, a method that took into account the fact that many crimes are not reported to the police, that most crimes known to the police do not result

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in an arrest, and that some crimes are likely to be committed by groups of persons rather than by single offenders. Combining all the individual crime rates, the offenders in this study (a group of adults who had been arrested at least twice in Washington, D.C.) committed between nine and 17 serious offenses per year free.[9]

This number was strikingly similar to the original estimates used by the Shinnars that had provoked so much criticism. And confidence in the Blumstein-Cohen estimates was increased when the results of a major study at Rand became known. Researchers there had been interviewing prisoners (first in California, then in other states) to find out directly from known offenders how much crime they were committing while free. No one can be certain, of course, that the reports of the convicts constitute an accurate record of their crimes, undetected as well as detected, but the Rand researchers cross-checked the information against arrest records and looked for evidence of internal consistency in the self-reports. Moreover, the inmates volunteered information about crimes they had committed but for which they had not been arrested. Still, it is quite possible that the self-reports were somewhat inaccurate. However, it is reasonable to assume that inmates would be more likely to conceal crimes they did commit rather than admit to crimes they did not commit. Thus, any errors in these self-reports probably lead to an underestimate of the true rate of criminality of these persons.

The Rand group found that the average California prisoner had committed about 14 serious crimes per year during each of the three years he was free.[10] This number falls squarely within the range estimated, using very different methods, by Blumstein and Cohen and, again, is comparable to the original estimate of the Shinnars. To state the California findings in slightly different terms, if no one was confined in state prison, the number of armed robberies in California would be about 22 percent higher than it now is.

After their initial survey of 624 incarcerated male felons in California, the Rand group enlarged their study to include about 2,200 inmates in the states of California, Michigan, and Texas. Again, they gathered self-reports on crimes committed while free. This larger survey produced even higher estimates of individual offense rates. A person serving time in California for robbery, for example, would on the average admit to committing 53 robberies per year free; in Michigan, the number was 77. Those who were active burglars reported committing 90 burglaries per year in California. Interestingly, the offense rates of Texas inmates were much lower—on the average, robbers committed nine robberies a year

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and burglars committed 24 burglaries.[11] This apparently was because Texas sent to prison so much larger a fraction of its convicted robbers and burglars that many inmates were low-rate offenders; in California and Michigan, where sentencing policies seem more lenient, a smaller proportion of low-rate offenders wind up in prison.

But the Rand group learned something else which would turn out to be even more important. The "average" individual offense rate was virtually a meaningless term because the inmates they interviewed differed so sharply in how many crimes they committed. A large number of offenders committed a small number of offenses while free and a small number of offenders committed a very large number of offenses. In statistical language, the distribution of offenses was highly skewed. For example, the median number of burglaries committed by the inmates in the three states was about five a year, but the 10 percent of the inmates who were the highest-rate offenders committed an average of 232 burglaries a year. The median number of robberies was also about five a year, but the top 10 percent of offenders committed an average of 87 a year. As Peter W. Greenwood, one of the members of the Rand group, put it, incarcerating one robber who was among the top 10 percent in offense rates would prevent more robberies than incarcerating eighteen offenders who were at or below the median.

Not long after the Rand group began publishing its findings, Brian Forst and his colleagues at the Institute for Law and Social Research (INSLAW) in Washington, D.C., began to release data from a survey of 1,700 federal offenders whose criminal careers they had followed from 1970 through 1976. These persons also had high individual offense rates, nearly eight nondrug crimes per year free. And they also had a highly skewed distribution of offenses—over half were not known to have committed even one crime after being released from prison, but the other half committed at least 19 per person per year.[12] Once again, here is evidence that incapacitation makes a difference to society, at least if it is directed at the right offenders.

"Selective" versus "collective" incapacitation

The initial response to the work of the Shinnars was not only that they exaggerated the number of crimes being committed by active, serious offenders, but that they neglected the great cost of reducing the crime rate by locking up a larger fraction of these

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offenders or by keeping those already inside locked up for longer periods of time. The argument that the Shinnars had greatly exaggerated individual crime rates was eventually disproved, as we have seen. But the argument about cost remained. Even the Shinnars admitted that if New York State were to follow their recommendations and send every convicted mugger and robber to prison for five years, the state would have to find prison space for an estimated 40 to 60 thousand persons convicted of these "safety" crimes. But as of 1970, only five years before the Shinnars published their study, New York State was incarcerating only 9,000 persons for having committed a violent crime or burglary and was holding in prison only a little over 12,000 persons for all felonies combined. Thus, to accommodate the Shinnars' plan, the space available for persons convicted of violent crimes and burglary would have to be increased (at a minimum) four-fold.

Joan Petersilia and Peter Greenwood, both members of the Rand group, also came to the conclusion that reducing crime by a significant amount through longer prison terms would be very costly. They analyzed the arrest records of 625 persons convicted in Denver, Colorado, of serious crimes between 1968 and 1970. Instead of estimating the effect of differing sentencing policies on a large group of offenders whose individual behavior was unknown, they looked at the actual arrest record of each person individually and asked whether a particular sentencing policy (say, a three-year mandatory minimum) would have led to the imprisonment of the offender for his last offense and thereby have prevented the offense from being committed. Knowing this, they could then calculate how many additional persons would have to be sent to prison. Their analysis suggested that incapacitation works, but at a price. If every person convicted of a felony received a five-year prison term, the number of felonies committed would drop by 45 percent but the size of the prison population would increase by 450 percent. If the mandatory five-year term were reserved for repeat offenders, such as convicted felons who had previously been convicted of a felony, then the crime rate would drop by 18 percent and the prison population would increase by 190 percent.[13]

These conclusions about the cost of achieving large crime reductions through incapacitation were sobering, but one finding was also puzzling. The Petersilia-Greenwood data clearly indicated that reserving the mandatory minimum sentence for repeat offenders would be no more advantageous—in terms of crimes prevented for a given increase in prison population—than if it were imposed on

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all convicted persons, including first-time offenders. At first blush, this seemed contrary to common sense. If recidivists commit a disproportionately large share of all serious crime, how can it be that locking them up for five years would cut the crime rate by a smaller fraction than would be achieved by locking up first-time offenders?

One explanation for the puzzle, suggested by Petersilia and Greenwood, was that most repeat offenders are already given prison terms by judges and so there is not much more to be gained by insuring that every repeat offender gets a long term. But another possible explanation became clear to the Rand group as they studied the self-reports of prison inmates in three states. They learned from their survey that a small number of offenders has very high offense rates. Suppose that judges, in sentencing criminals, *do not know who the high rate offenders are* and thus give the longest sentences to persons who may not be the most serious criminals. Judges, we know, give the longest sentences to persons who are convicted for the most serious crimes and who have a long prior record. That seems reasonable until one asks whether a person convicted of, say, robbery who has a prior conviction for a felony is any more likely to be a high-rate offender (that is, a frequent recidivist) than a person convicted of robbery who does not have a prior record.

It would seem plausible to assume that high-rate offenders have longer rap sheets than low-rate offenders. After all, a person who has committed a dozen robberies is more likely to be arrested and prosecuted than one who has committed his first stick-up. Judges make this assumption when they give longer sentences to a robber who has a prior conviction than to one who has been convicted for the first time. But we cannot be certain this assumption is correct, and researchers at Rand have found evidence that should make us question it. In their study of California prison inmates, they learned that judges are more likely to send low-rate burglars to jail than to prison. Since jail terms ordinarily cannot exceed one year, this means that the low-rate burglars who wind up in jail will usually be serving shorter sentences than the high-rate ones who wind up in prison. So far, so good. But the match between rate of offending and the choice between jail or prison is not very close. For example, of the high-rate burglars, over half went to jail rather than to prison. Not only do most low-rate burglars get a break, so also do most high-rate ones. And if we look just at those offenders who are in prison, we find that the time they serve there bears little relationship to the rate at which they are offend-

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ing while free on the street. In California, imprisoned low-rate robbers and imprisoned high-rate robbers serve almost identical sentences—about fifty months. Indeed, imprisoned low-rate burglars actually serve longer sentences (thirty months) than do imprisoned high-rate burglars (twenty months).

The California study is one of the few of its kind, and we cannot be certain that the poor match it discovers between rate of offending and length of prison term would be true if the study looked at all robbers and burglars (and not just at those in prison) or looked more closely at the exact nature of the robberies and burglaries these persons committed (and not just at the number). But at the very least, the Rand data should force us to take a hard look at the relationship between official records (such as rap sheets) and actual offense rates.

Who are the high-rate offenders?

Whatever the exact nature of that relationship, all the evidence we have implies that, for crime-reduction purposes, the most rational way to use the incapacitative powers of our prisons would be to do so selectively. Instead of longer sentences for everyone, or for persons who have prior records, or for persons whose present crime is especially grave, longer sentences would be given primarily to those who, when free, commit the most crimes. Exactly the same conclusion was reached by Brian Forst and his colleagues who studied the careers of criminals in the federal system.

But how do we know who these high-rate, repeat criminals are? Knowing the nature of the present offense is not a good clue. The reason for this is quite simple—most street criminals do not specialize. Today's robber can be tomorrow's burglar and the next day's car thief. When the police happen to arrest him, the crime for which he is arrested is determined by a kind of lottery—he happened to be caught red-handed, or as the result of a tip, committing a particular crime that may or may not be the same as either his previous crime or his next one. If judges give sentences based entirely on the gravity of the present offense, then a high-rate offender may get off lightly because on this occasion he happened to be caught snatching a purse. The low-rate offender may get a long sentence because he was unlucky enough to be caught robbing a liquor store with a gun.

Prosecutors have an understandable tendency to throw the book at persons caught committing a serious crime, especially if they

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have been caught before. To a certain extent, we want to encourage that tendency. After all, we not only want to reduce crime, we want to see criminals get their just deserts. Society would not, and should not, tolerate a system in which a prosecutor throws the book at purse snatchers and lets armed robbers off with a suspended sentence. But while society's legitimate desire for retribution must set the outer bounds of any sentencing policy, there is still room for flexibility within those bounds. We can, for example, act so that all robbers are punished with prison terms, but give, within certain relatively narrow ranges, longer sentences to those robbers who commit the most crimes while free on the street.

If knowing the nature of the present offense and even knowing the prior record of the offender are not accurate guides to identifying high-rate offenders, what is? Obviously, we cannot ask the offenders. They may cooperate with researchers once in jail, but they have little incentive to cooperate with prosecutors before they go to jail, especially if the price of cooperation is to get a tougher sentence. But we can see what legally admissible, objective attributes of the offenders best predict who is and who is not a high-rate offender. In the Rand study, Greenwood and his colleagues discovered, by trial and error, that the following seven factors, taken together, were highly predictive of a convicted person being a high-rate offender: (1) was convicted of a crime while a juvenile (that is, before age sixteen); (2) used illegal drugs as a juvenile; (3) used illegal drugs during the previous two years; (4) was employed less than 50 percent of the time during the previous two years; (5) served time in a juvenile facility; (6) was incarcerated in prison more than 50 percent of the previous two years; and (7) was previously convicted for the present offense.

Using this scale, Greenwood found that 82 percent of those predicted to be low-rate offenders in fact were, and 82 percent of those predicted to be medium- or high-rate offenders also were. To understand how big these differences are, the median California prison inmate who is predicted to be a low-rate offender will in fact commit slightly more than one burglary and slightly less than one robbery per year free. By contrast, the median California inmate who is predicted to be a high-rate offender will commit 93 burglaries and 13 robberies per year free. In other states, this prediction scale may be more or less accurate.

A similar, though not identical, scale was developed by Brian Forst and William Rhodes at INSLAW and was based on their study of federal offenders. High-rate offenders (what they call

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"career criminals") are likely to be those who are young, who use heroin sometimes and who use alcohol heavily, who have a long criminal career (and thus who started in crime at an early age), who have served a long prison term, and whose present offense involves violence. Applying this scale to federal offenders whom they followed for five years, Forst and his associates found that 85 percent of those predicted to be career criminals were in fact rearrested, most of them within 12 months; only 36 percent of those not predicted to be high-rate offenders were rearrested.

Opinions differ as to the effect on the crime rate and prison population of making sentences for high-rate offenders longer than those for low-rate ones. Greenwood applied his scale to California and found that if all low-rate robbers received two-year prison terms (most now receive longer ones) and all high-rate robbers received seven-year terms (most now receive shorter ones), the number of robberies committed in the state would drop by an estimated 20 percent with no increase in the prison population. In a state such as Texas, which already has a tough sentencing policy, the gain from shifting to this more selective approach would be less.

Even at Rand, colleagues of Greenwood disagree about the policy implications of the fact, which they do not dispute, that a handful of high-rate offenders is responsible for much crime. Jan and Marcia Chaiken argue that while the factors Greenwood uses enable him to identify that *group* of offenders who are especially dangerous, they will lead to substantial errors when they are used to identify any *individual* as a high-rate offender, especially if the identification must rely only on that information currently available in official records.[14] In a forthcoming review of this and related issues, the group at Harvard headed by Susan Estrich, Mark H. Moore, and Daniel McGillis argues that it would be better to improve the ability of police and prosecutors to identify and arrest high-rate offenders than to improve the ability of judges to sentence convicted offenders; indeed, if we solved more crimes, the judges would have more reliable official information about who the dangerous offenders really are and therefore could more effectively apply their existing rules of thumb in choosing sentences. I am skeptical that we can much improve our ability to solve crimes and so I doubt that this strategy will make sentencing decisions any easier. Judges now incarcerate selectively and always will; the central question is whether we can improve on the basis for that selectivity. Further research may well overcome some of the problems

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in the Greenwood scale. And in the meantime, Greenwood and the Chaikens agree that we can now identify the low-rate offenders with substantial accuracy. At a minimum, we can do a better job of keeping sentences for these persons short so as not to consume scarce prison space needed for those persons whose behavior is morally more repugnant or statistically more risky.

If it works, is it fair?

Obviously, a policy of reducing crime by selective incapacitation (that is, by adjusting prison terms to reflect predicted individual offense rates) raises a number of issues. Though these issues are important, one must bear in mind that they cannot be resolved by comparing selective incapacitation to some ideal system of criminal justice in which everyone receives exactly his just deserts. No such system exists or ever will. One must compare instead the proposed policy with what exists now, with all its imperfections, and ask whether the gains in crime reduction are worth the risks entailed when we try to make predictions about human behavior.

The first issue is whether it is permissible to allow crime-control to be an objective of sentencing policy. Some persons, such as Andrew von Hirsch, claim that only retribution—what he calls "just deserts"—can be a legitimate basis for sentencing.[15] To some extent, he is undoubtedly correct. Even if we were absolutely certain that a convicted murderer would never murder again, we would still feel obliged to impose a relatively severe sentence in order to vindicate the principle that life is dear and may not be unlawfully taken without paying a price. Moreover, the sentences given low-rate offenders must reflect society's judgment as to the moral blame such behavior deserves, and the sentences given high-rate offenders ought not exceed what society feels is the highest sentence appropriate to the crime for which the offenders were convicted. And low-rate offenders should get a sufficiently severe sentence to help persuade them, and others like them, not to become high-rate offenders. Still, after allowing for all of these considerations, there will inevitably remain a range of possible sentences within which the goal of incapacitation can be served. The range will exist in part because there is no objective way to convert a desire for retribution into a precise sentence for a given offense and in part because legislatures will almost invariably act so as to preserve some judicial discretion so that the circumstances of a case which can not be anticipated in advance may affect the sentence. Among

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those circumstances is a concern for protecting society from the threat that a given offender represents.

The second issue is whether our prediction methods are good enough to allow them to influence sentence length. The answer to that question depends on what one will accept as "good enough." Absolute certainty will never be attainable. Moreover, criminal justice *now*, at almost every stage, operates by trying to predict future behavior. When a prosecutor decides how much plea bargaining he will allow, he is trying to predict how a judge or jury will react to his evidence, and he is often trying to guess how dangerous an offender he has in his grasp. When a judge sets bail, he is always making a prediction about the likelihood of a person out on bail showing up for his trial and is frequently trying to predict whether the person, if out on bail, will commit another crime while free. When a defense attorney argues in favor of his client being released on his own recognizance, without bail, he is trying to persuade the judge to accept his prediction that the accused will not skip town. When the judge passes a sentence, he is trying, at least in part, to predict whether the convicted person represents a future threat to society. When a parole board considers a convict's application for early release, it tries to predict—often on the basis of a quantitative system, called a "base expectancy table"—whether the person will become a recidivist if released. Virtually every member of the criminal justice system is routinely engaged in predicting behavior, often on the basis of very scant knowledge and quite dubious rules of thumb. The question, therefore, is this: Are the kinds of predictions that scholars such as Greenwood and Forst make about future criminality better (more accurate) and thus fairer than the predictions prosecutors and judges now make?

A third issue is tougher. Is it fair for a low-rate offender who is caught committing a serious crime to serve a shorter sentence (because he is not much of a threat to society) than a high-rate offender who gets caught committing a relatively minor offense? Probably not. Sentences would have to have legal boundaries set so that the use of selective incapacitation could not lead to perverse sentences—armed robbers getting one year, purse-snatchers getting five. Since, to the best of my knowledge, selective incapacitation has never been made the explicit basis of a state sentencing policy, we cannot be certain how manageable this problem of reconciling justice and crime control will be.

Finally, there is bound to be a debate about the legal and even ethical propriety of using certain facts as the basis for making pre-

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dictions. Everyone would agree that race should not be a factor; everyone would probably agree that prior record should be a factor. I certainly believe that it is proper to take into account an offender's juvenile as well as his adult record, but I am aware that some people disagree. But can one take into account alcohol or drug use? Suppose the person claims to be cured of his drinking or his drug problem. Do we believe him? And if we do, do we wipe the slate clean of information about these matters? And should we penalize more heavily persons who are chronically unemployed, even if unemployment is a good predictor of recidivism? Some people will argue that this is tantamount to making unemployment a crime, though I think that overstates the matter. After all, advocates of pretrial release of arrested persons, lenient bail policies, and diverting offenders away from jail do not hesitate to claim that having a good employment record should be counted in the accused's favor. If employment counts in favor of some, then obviously unemployment may be counted against others. Since advocates of "bail reform" are also frequent opponents of incapacitation, selective or collective, it is incumbent on them to straighten out their own thinking on how we make use of employment records. Nonetheless, this important issue deserves thoughtful attention.

Prisons are the underlying issue

On one matter, critics of prison may take heart. If Greenwood and others are correct, then an advantage of selective incapacitation is that it can be accomplished without great increases (or perhaps any increase) in the use of prison. It is a way of allocating more rationally the existing stock of prison cells to produce, within the constraints of just deserts, greater crime-control benefits. Many offenders—indeed most offenders—would probably have their sentences shortened, and the space thereby freed would be allocated to the small number of high-rate offenders whom even the most determined opponents of prison would probably concede should be behind bars.

They ought to take heart, but not too much heart. The estimates of the crime-reduction effect of selective incapacitation are based on a static world—a fixed number of criminals committing a predictable number of crimes. But crime rates have been increasing since the early 1960s and no sharp, lasting downward trend is yet in evidence. Moreover, states such as California, though they have experienced greatly increased prison populations, still make much

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less use of prison than does, say, Texas, so that in California a significant number of offenders, perhaps serious ones, are not confined at all.

Even if the recent modest decline in crime rates were to continue, the number of persons in prison would probably increase for the next several years. This is because a decline in crime rates would likely reflect, at least in part, a decline in the number of young males in the population. But young males are less likely to go to prison than older males, in large measure because of the tendency of judges to defer a sentence to prison until the offender has acquired a lengthy criminal record—which means until he has become older. This tendency is especially marked in those places where judges in adult courts do not see, or are not influenced by, the juvenile record of adult offenders. Thus, the peak in commitments to prison will occur some years after the peak in crime rates. Moreover, the size of prison populations is determined not only by the number of new commitments, but by the length of the sentence of persons in prison. Those sentences have not been getting shorter of late. (Ironically, they have not got much longer, either, despite the fact that a growing fraction of the persons in prison have committed violent or other serious offenses.) Combining all these factors, Alfred Blumstein and his colleagues at Carnegie-Mellon University, using Pennsylvania data, predict that prison populations in that state will not reach their peak until 1990, and perhaps later.[16]

If one adds to all this the extreme level of overcrowding now characteristic of many state prisons, the case for prison construction becomes very strong. One can moderate this need to a degree by shortening some of the very longest sentences, but no one has yet calculated how large a gain in prison space such sentence shortening would produce. And if one believes that deterrence works, then one may wish to see a larger fraction of convicted offenders get some prison term, even if just a short one. None of this is to deny that real opportunities exist for exploiting nonprison methods of handling the nonviolent, less serious offender—restitution, community service, intensive probation, halfway houses, and the like. But even after making the largest possible allowance for such commendable methods, it is hard to escape the realization that, however selectively we set the sentences for robbers and burglars, the need to accommodate a rising level of new commitments, and to relieve present overcrowding and the bestiality that so often accompanies it, new facilities will be needed.

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Some persons find prison construction undesirable because they think prisons are deplorable. Such sentiments are sometimes organized into movements designed to place a moratorium on prison construction. It is never clear what alternative such persons would suggest. As of November 1979, well over half (58 percent) of all state inmates were imprisoned for a violent offense, 14 percent for murder alone. Only 7 percent were in prison because of drug offenses. Of the one-third who were serving time for nonviolent property crimes, over half were burglars. Who among these prisoners should be released to relieve overcrowding and accommodate new commitments? And the number who would have to be released to eliminate overcrowding is very large, as can be inferred from the fact that, if one uses 60 square feet per prisoner as the standard, then 58 percent of all one-person cells and 90 percent of all two-person cells are overcrowded. Vague talk about "alternatives to incarceration" is no substitute for a clear, quantitative estimate of how many persons can be diverted, safely, from prison and where these diverted persons are to go.

Indeed, much of the debate about incapacitation is not about its crime-reduction potential or the relationship between imprisonment and a social concern for appropriate retribution; it is rather about a set of diversionary arguments designed to make American penal policy look as bad as possible while sidestepping any serious confrontation with the hard policy choices.

One such argument is: "The United States already imprisons a larger proportion of its population than any other civilized nation, or at least any civilized nation outside the Soviet bloc." This is like disproving the need for hospitals by saying that the United States already hospitalizes a larger fraction of its population than any other nation. It implies that we are sending people to prison without any regard to the number of crimes committed (or sending them to hospitals without regard to whether they are sick). The proper question is whether we imprison a higher fraction of those arrested, prosecuted, and convicted than do other nations. No comprehensive international data exist on this subject, but such comparisons as do exist suggest that the argument that this country overimprisons is, to say the least, questionable. Kenneth I. Wolpin at Yale compared the probability of being convicted and imprisoned for various offenses in England and the United States. In the period 1961-1967, persons who were prosecuted for robbery in England were much more likely to be convicted than those prosecuted for that crime in the United States (about 79 percent were con-

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victed in England, only 42 percent in this country). Of those convicted of robbery, a higher percentage (48 percent) were imprisoned in England than in the United States (31 percent). On the other hand, sentences for robbery tended to be longer in the United States.[17]

A second argument is: "Sending a person to prison costs more than sending a person to Harvard." God knows, Harvard is expensive enough. I am relieved to hear that something else costs more. But I assume that most parents send their children to college rather than to prison for reasons other than its being cheaper. Similarly, society sends criminals to prison rather than college, despite the fact that it costs more, because society believes it is getting something for its money from prison that it could not get from college: greater safety (temporarily), some prospect of deterrence, and the satisfaction of its desire for lawful retribution. I wish persons who point to the costs of prison as if that were a conclusive argument would apply that view consistently. For example: "It costs more to send children to Harvard than it would cost to send them to work in the coal mines." Or, "We cannot afford to send sick people to hospitals because it costs $50,000 (or whatever) per bed to build a hospital."

A third argument: "If we build more prisons, we will fill them up whether we need to or not." Or put in other words, the size of our prison population is determined, not by the crime rate, but by the capacity of our prisons. A much-heralded study by Abt Associates in 1981 seemed to provide evidence to confirm this view. On the average, it claimed, new additions to prison capacity are filled to overflowing within two years after completion and filled past the level of overcrowding within five years.[18] The Panel on Sentencing Research of the National Reserch Council took a close look at the Abt findings and concluded that they were seriously in error. To use the council's words, the Abt study "provides no valid support for the capacity model."[19] Among the errors it discovered were computational mistakes, implausible assumptions, and a failure to look at the very different experiences of individual states (15 of which actually experienced decreases in their prison populations between 1971 and 1975).

The problem of how best to manage our prison populations cannot, obviously, be left to such sloganeering. Neither can it be left to the whims of state legislators who find it politically irresistible to vote for tougher penalties for certain crimes but politically awkward to vote for the money to pay for the necessary additions to

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prisons or to allow new prisons to be built in their districts. It is possible to think sensibly about the uses of prison by asking what kinds of offenders should be sent to what kinds of facilities and for how long, by estimating carefully both the prison-capacity and crime-reduction implications of any proposed sentencing policy, and by avoiding the tendency to think that the best way to handle crime is always to impose the longest possible sentences.

NOTES

[1] Mark A. Peterson and Harriet B. Braiker, *Doing Crime: A Survey of California Prison Inmates* (Santa Monica, CA: Rand Corporation, 1980), pp. x, 50.
[2] James Q. Wilson, *Thinking About Crime* (New York: Basic Books, 1975), p. 201; Shlomo and Reuel Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," *Law and Society Review* 9 (1975): 581-611; Benjamin Avi-Itzhak and Reuel Shinnar, "Quantitative Models in Crime Control," *Journal of Criminal Justice* 1 (1973): 196-197.
[3] David F. Greenberg, "The Incapacitative Effect of Imprisonment: Some Estimates," *Law and Society Review* 9 (1975): 566-570.
[4] Stevens Clarke, "Getting 'Em Out of Circulation: Does Incarceration of Juvenile Offenders Reduce Crime?" *Journal of Criminal Law and Criminology* 67 (1974): 528-535.
[5] Stephan Van Dine et al., "The Incapacitation of the Dangerous Offender: A Statistical Experiment," *Journal of Research in Crime and Delinquency* 14 (1977): 22-34.
[6] Jacqueline Cohen, "The Incapacitative Effect of Imprisonment: A Critical Review of the Literature," in *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, ed. Alfred Blumstein et al. (Washington, D.C.: National Academy of Sciences, 1978), 201.
[7] Stephen Van Dine et al., "Response to Our Critics," *Journal of Research in Crime and Delinquency* 15 (1978): 135-139; Stephen Van Dine et al., *Restraining the Wicked: The Dangerous Offender Project* (Lexington, MA: Lexington/D.C. Heath, 1979).
[8] Cohen, "The Incapacitative Effect of Imprisonment," p. 206.
[9] Alfred Blumstein and Jacqueline Cohen, "Estimation of Individual Crime Rates From Arrest Records," *Journal of Criminal Law and Criminology* 70 (1979): 585.
[10] Peterson and Braiker, *Doing Crime*, pp. vii, 32.
[11] Peter W. Greenwood, *Selective Incapacitation* (Santa Monica, CA.: Rand, 1982), pp. 43-44.
[12] Brian Forst et al., "Targeting Federal Resources on Recidivists." *Final Report of the Federal Career Criminal Research Project* (Washington, D.C.: INSLAW, 1982), pp. 18-19.
[13] Joan Petersilia and Peter W. Greenwood, "Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations," *Journal of Criminal Law and Criminology* 69 (1978): 604-615.
[14] Jan M. Chaiken and Marcia R. Chaiken, *Varieties of Criminal Behavior* (Santa Monica, CA: Rand Corporation, 1982).
[15] Andrew von Hirsch, *Doing Justice: The Choice of Punishment*, a report of the Committee for the Study of Incarceration (New York: Hill and Wang, 1976).
[16] Alfred Blumstein, Jacqueline Cohen, and Harold D. Miller, "Demographically Disaggregated Projections of Prison Populations," *Journal of Criminal Justice* 8 (1980): 22.

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[17] Kenneth I. Wolpin, "An Economic Analysis of Crime and Punishment in England and Wales, 1894-1967," *Journal of Political Economy* 86 (1978): 819-80. See also James Q. Wilson, "Crime and Punishment in England," *The Public Interest*, Number 43 (Spring, 1976): 18-19.
[18] Kenneth Carlson, *Population Trends and Projections*, vol. 2 of *American Prisons and Jails* (Washington, D.C.: National Institute of Justice, 1980), pp. 53-56, 173-186.
[19] National Research Council, *Research on Sentencing: The Search for Reform*, chap. 5.

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"Corporate kidnap" of the small-business employee

BRADLEY R. SCHILLER

THE role of small business in creating new jobs has been hotly debated. On one side, David Birch and his associates at MIT claim that firms with fewer than 100 employees account for over 70 percent of all new jobs. On the other, critics point out that Birch's assertions imply a radical shift in the make-up of the business community—with small businesses employing an increasing share of the workforce—and no such shift has been observed.[1]

The entire debate over net job creation has not only been inconclusive, it has also neglected more crucial economic issues. The biggest labor concerns of business relate to labor *turnover*, not net job creation. The average firm loses 15-20 percent of its workforce each year, while the workforce grows by only 1.5-2 percent a year. This means that at least five out of every six new hires are replacement workers, not net new workers. As a consequence, firms spend a lot more time and money replacing lost workers than filling newly-created jobs. Holding down turnover and training costs is

[1] David L. Birch's study is summarized in his article "Who Creates Jobs?," *The Public Interest*, Number 65 (Fall 1981). Lower estimates are contained in Catherine Armington and Marjorie Odle, "Sources of Recent Employment Growth, 1978-1980" (Washington, D.C.: The Brookings Institution, March 1982).

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often the key to higher productivity, profits, and even economic growth.

The tendency of workers to change employers resembles a game of musical chairs. As in most games, there are winners and losers. Most workers who voluntarily leave one firm and go to another end up with higher pay. They are winners—and so is the economy, to the extent that higher pay reflects greater productivity. On the other hand, high rates of turnover also exacerbate structural unemployment. Many of the job vacancies created by attrition cannot be filled by job seekers. In effect, some of the chairs in the game are too small or too fragile for players to sit in. As a result, some job-seekers remain standing even though vacant chairs are available; they are among the losers in the turnover game.

Many employers also lose the turnover game. Firms that cannot quickly replace lost workers often lose sales and profits. On the other hand, many firms that are able to find and train new workers discover that the process is too expensive. All too often, newly trained workers leave a firm before the firm has reaped any benefit from the training it provides. This leaves the employer with expensive recruitment and training bills but no added revenue. As it turns out, small businesses—those employing fewer than 100 workers—are most likely to be among these losers. Small businesses provide a disproportionate share of initial on-the-job training, only to watch their trained workers later join large corporations.

The problem of balancing training costs and turnover is particularly acute for firms hiring young workers—those looking for their first regular jobs. A firm that hires such workers incurs substantial costs and risks. Entrants to the labor force not only need training in particular skills, but also experience in the rudiments of workplace behavior. Moreover, their initial productivity is apt to be low, often below the value of the statutory minimum wage. As a result, the employer who hires young, new workers incurs a substantial risk. He is betting that the newly-hired workers will stay with the firm long enough to recoup his initial training costs. This cost recovery will take place when productivity begins to exceed wage costs. If an employer can retain initial workers beyond that point, he will ultimately recover his training costs.

Many employers are unwilling to incur these risks. Indeed, many firms shun young workers altogether, hiring only people with experience and a record of steady employment. A few minutes spent perusing the help-wanted ads will confirm this pattern. Experienced workers command higher wages but ultimately may cost employers

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less since related training and turnover costs are reduced. The simple economics of this situation goes a long way in explaining the exceptionally high unemployment rates of American youth.

Investigating initial job attachments

Almost everyone ultimately does get that first job, of course, so someone is providing initial job opportunities, work experience, and on-the-job training. Who does it? How much does it cost? And do the affected employers end up as winners or losers in the turnover game?

In order to answer these questions, the Small Business Administration has supported a study of "initial job attachments." By looking at the first job a person has, and then at his subsequent employment history, it is possible to see what sorts of businesses give most first jobs, how long the employees stay, and the salaries they receive at subsequent places of employment. From this information we can identify which sector of the business community is bearing the greatest burden of training new employees, and whether it receives adequate compensation. (Data on initial attachments and subsequest employment were obtained from earning records collected by the Social Security Administration.)

The concept of initial attachment used in this study does not refer literally to the first job a person has. Young people typically have erratic job experiences that include repeated entry into, and exit from, the labor force.[2] The "first" job may be a newspaper delivery route that lasts a year or two, or just a few weeks of part-time help during summer vacation. On the other hand, the first recorded job might be a regular, full-time position taken after completing school.

Because the primary concern here is the cost of early on-the-job training, initial attachment to a specific employer is the focus of interest, rather than a first job *per se*. Jobs held for only a few weeks or months, or on a very erratic basis, provide little opportunity for on-the-job training. By contrast, a period of continuous employment in a single firm provides both opportunities and incentives for training. Hence, "initial attachment" is defined as the first job held continuously for a period of at least four calendar quarters. The worker must have had at least some wages from the same employer in each of those quarters. This assures that the

[2] Martin Feldstein, "The Economics of the New Unemployment," *The Public Interest*, Number 33 (Fall 1973): 11-12.

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worker was employed a minimum of six months and two days, allowing for spillover across calendar quarters.

A second element in the definition of initial attachment is wages. Continuity of firm attachment is important in its own right, even if a job is part-time or low-paying. From an employer's point of view, all workers require training and supervision. In fact, part-time workers may require disproportionate expenditure. However, young workers employed erratically, or for only a few hours per week, may not receive or require much training. For this reason, the initial job is defined as the first job that is held for at least four calendar quarters and is paid at least $1,000 (all figures are in 1982 dollars).

This concept of initial attachment makes no reference to the completion of schooling. Once again, this is partly a limitation of the available data. However, there is no inherent reason why jobs held while someone is also attending school should be ignored. On the contrary, such jobs, especially if maintained for four or more quarters, are likely to provide substantial training and experience. Such jobs may also have a formative influence on performance in school, including decisions on career studies.[3] Students with outside employment often discover job opportunities and interests that might otherwise have been neglected. As for employers, the costs of training student workers are probably no less than those for other workers.

The focus of this study was on male workers who were less than 22 years of age at the time of their first regular job (i.e., the first job held for at least four consecutive quarters and paying $1,000 or more). Only those young men whose first regular job was in the civilian sector were considered, a condition that excluded 23 percent of all young men. The average age of the remaining 2.9 million young men at initial attachment was just over 19 years.

One striking feature of workers at initial attachment is their prior job experience. Every young male had some paid employment experience before embarking on his first "steady" job. No one, it turns out, keeps his first job very long. The average period worked before initial attachment, counting any and all jobs, is 4.1 quarters. By definition, no prior job was held for four consecutive quarters; hence, the prior experience is likely to have come from several

[3] A recent study demonstrated that initial industry experience still had an influence on earnings and occupational status as much as 20 years later. See Ronald D'Amico, "Career Paths and Career Origins" (Columbus, OH: Center for Human Resource Research, Ohio State University, January 1981).

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employers. Moreover, there is no minimum to the amount of work in a quarter: *Any* paid employment during a calendar quarter qualifies as one quarter of prior experience. Hence, the existence of 4.1 quarters of experience before initial attachment need not imply much job experience. Nevertheless, the accumulation of some experience, however slight, implies some training and an opportunity to "shop around" before making an initial commitment.

Interestingly, some of this prior work experience was obtained from the same employer who ultimately provided the initial attachment. One out of eight "initial" workers had worked previously for the same employer. Much of this was probably summer employment that was later followed by full-time employment after school completion. In 6 percent of the cases, the earlier employment was disrupted by military service.[4]

Who provides first jobs?

The most striking result of this investigation is that small businesses—those employing fewer than 100 workers—provide most initial work and training opportunities. Two-thirds of all male workers get their first regular job in a small business. Medium-sized firms—those employing 100-999 workers—provide only 22 percent of initial jobs. The remaining 11 percent of new jobs are provided by big corporations. As Table I reveals, small firms assume a larger responsibility for initial jobs than their share of *total* employment implies. The smallest firms—those with fewer than 20 employees—stand out in this regard. They employ only 32 percent of all private-sector workers, but provide 39 percent of initial jobs. This situation is reversed for larger firms: They employ a larger share of the workforce than that for which they provide initial job opportunities.

The disproportionately large role of small businesses in initial hiring says nothing about net job creation. As noted earlier, labor turnover is a phenomenon common to all firms and industries, whether they are growing or not. What is evident here is that small businesses are doing more than their "fair" share to provide initial

[4] As noted above, young men whose first steady (four-quarter) employment was in the armed forces were excluded from the study sample. That exclusion affected 23 percent of all young males. On top of this, 6 percent of the study sample served in the armed forces for 3 quarters or less before taking their first steady civilian job. This experience emphasizes the military's status as the largest single source of initial work experience for American males. In view of the fact that the armed forces must recruit one out of five 18-year olds in the next decade just to maintain personnel strength, the role of military experience in early training is not likely to diminish.

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TABLE I. *Initial and General Employment, by Firm Size (Expressed as a Percentage of Male Workers)*[1]

NUMBER OF EMPLOYEES IN FIRM	INITIAL ATTACHMENT	ENTIRE LABOR FORCE
Small:		
1-19	39%	32%
20-49	18	15
50-99	10	11
Subtotal:	67%	58%
Medium:		
100-249	10%	12%
250-499	6	8
500-999	6	7
Subtotal:	22%	27%
Large:		
1,000-2,499	5%	6%
2,500-4,999	3	4
5,000+	3	5
Subtotal:	11%	15%

[1] Source: Bradley R. Schiller, *Human Capital Transfers from Small to Large Businesses*, report to U.S. Small Business Administration, July 1982.

work experience and thus to maintain a flow of experienced workers for the economy.

The disparities between workforce shares and initial-job shares, as summarized in Table I, imply a kind of corporate kidnap. Large corporations are taking a disproportionate number of young workers from small businesses, rather than hiring and training them first themselves. This suggests that small businesses are subsidizing large corporations—and the economy as a whole—by providing essential work experience and training.

A closer look at the mobility of new workers between small and large firms underscores the extent of this subsidy. A comparison was made between the size of a worker's initial employer and the size of the firm employing the worker nine years later. During that relatively short period of time, only 1.2 percent of all new workers stayed with their first employer. Everyone else had changed jobs at least once, and usually several times. Surprisingly, most workers continued to work for employers who were the same size as the employer who provided their first job. Nonetheless, there was significant net mobility of newly-trained workers from small to large firms (Table II). We find that 230,000 newly-trained workers moved from their initial small-sized employer to a large corporation within nine years. By contrast, only 86,000 newly-trained workers left large firms and went to small firms. On a net basis, then, small

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TABLE II. *Longer-Term Worker Mobility across Firm-Size Classes (Numbers in Thousands of Male Workers)*[1]

SIZE OF INITIAL EMPLOYER	SIZE OF EMPLOYER NINE YEARS LATER			
	Small	Medium	Large	Total
Small	851 (59%)	356 (25%)	230 (16%)	1,437 (64%)
Medium	199 (38%)	216 (42%)	103 (20%)	518 (23%)
Large	86 (31%)	58 (21%)	135 (48%)	279 (13%)
Total	1,136 (51%)	630 (28%)	468 (21%)	2,234 (100%)

[2] Source: Schiller, *Human Capital Transfers.*

businesses lost to large firms 144,000 workers for whom they had provided initial work experience. When migration to medium-sized firms is added, net losses to small businesses total 301,000.

Industry-by-industry differences

Though small business as a whole provides a disproportionate number of first jobs, there are significant differences between firms in different industries. As Table III indicates, the wholesale/retail industry group is by far the greatest source of initial attachment opportunities. Four out of ten young males get their first steady job in a wholesale or retail outlet. The most common outlets for initial attachment are grocery stores, eating and drinking places, motor vehicle and equipment suppliers, general merchandise stores, drug stores, and gasoline service stations.

The high frequency of initial attachments in retailing far exceeds the share of that industry in total employment. Whereas 40 percent of initial attachments occur in wholesaling/retailing, only 24 percent of all male jobs are found there. This implies that the retail industry is a common entry point into the labor market. Once young workers have accumulated some work experience and training in retailing, many move on to other industries.

Manufacturing (nondurables and durables) is the second most

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common source of opportunities. Over one-fourth of all young male workers start their working lives in a manufacturing firm. In this case, however, the portion of initial attachments (28 percent) is similar to the industry's share of total male employment (27 percent). Hence, there is little net migration of new workers out of manufacturing.

The last significant source of initial attachments is in the service industries. Over 13 percent of all workers get their first steady job in services. Table III indicates that far more workers end up in service industries than start there, however. (The low incidence of government employment depicted in Table III does not necessarily mean that the public sector provides few initial job opportunities. Rather, this reflects the exclusion of the federal government and much state and local government from Social Security coverage, the source of data for this study.)

There are also substantial industry differences in the size of firms providing initial-attachment opportunities. In the agriculture sector, virtually all initial attachments occur in very small enterprises. Small firms also provide an overwhelming share of initial attach-

TABLE III. *Industry of Initial Attachment and General Employment*[1]

	Initial Attachments		
INDUSTRY	PERCENTAGE	SHARE PROVIDED BY SMALL BUSINESSES	PERCENT OF MALE LABOR FORCE
Agriculture	1.4%	90.4%	3.3%
Mining and Construction	8.4	81.1	6.8
Nondurable Manufacturing	14.4	52.2	12.2
Durable Manufacturing	14.1	40.2	14.5
Transportation, Communications and Utilities	3.8	58.5	5.5
Wholesale and Retail	40.3	82.7	24.0
Finance, Insurance and Real Estate	3.1	57.4	5.5
Services, Business and Personal	8.3	84.8	7.5
Services, Professional and Household	5.0	57.3	15.5
Government	1.2	27.1	5.2
	100.0%	67.0%	100.0%

[1] Source: Schiller, *Human Capital Transfers.*

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ments in construction (81 percent), wholesale/retail outlets (83 percent), and business and personal services (85 percent). (These disproportionate shares of initial attachments are illustrated in the second column of Table III). Table III also highlights the relative infrequency of small businesses' providing initial attachments in durable manufacturing (40 percent), nondurable manufacturing (52 percent), transportation/communications/utilities (59 percent), and financial services (57 percent).

Direct and indirect costs of training

In feudal economic systems, significant labor migration was infrequent, and assured continuity of employment—firm loyalty, if you will—was a precondition of job and training opportunities. Workers were trained only if an employer could expect to benefit from later productivity gains, and long apprenticeships at low wages were a condition for acquiring marketable skills. In a competitive market economy no such conditions exist. Employers have no legal hold on workers they train. Indeed, the most common expectation among American employers is that they will end up paying higher wages or losing the very employees they train. In this context, it is hardly surprising that business executives, academics, and government officials complain of a lack of training facilities in the United States.

Still, *someone* must provide initial work experience opportunities, and it is evident that small businesses have assumed the lion's share of this burden. The remaining questions are: What does it really cost small businesses to provide this training, and why do they do it?

The costs of skill training are commonly measured in terms of direct outlays for tuition, materials, teachers, and other out-of-pocket expenses. Such direct costs are only a small fraction of total training costs, however, especially in small businesses. Much more important are the indirect costs associated with on-the-job supervision and the difference between wages and actual productivity.

The most valuable assets a small business has are the talent and time of its owner or manager. Small businesses thrive on the energy of their owners. Unlike corporate executives, small-business entrepreneurs must directly manage all aspects of their businesses. There is no planning department, no phalanx of operational vice-presidents, no retinue of lawyers and accountants, and, most important, no personnel department. As a result, the small-business owner must usually hire, train, and manage his employees directly. This means that every hour spent hiring and training new workers is

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a direct diversion from other essential activities. This diversion is probably the most substantial cost of training new workers, even though it is rarely measured, or even recognized. (This omission in turn reflects the focus of personnel research on large corporations, which not only command greater internal resources but also participate more extensively in government-funded training and research programs.)

The second set of costs associated with brand-new hires is the differential between wages paid and product produced. Labor-force entrants typically have a minimal amount of readily-usable skills. They need supervision, skill training, and work experience before they become really productive. However, employers must pay them at least $3.35 an hour, and often much more, just to comply with the law, to maintain pay scales, or to fufill employees' expectations. As a consequence, initial employers of labor-force entrants are often compelled to pay to labor-force entrants a wage that exceeds their productivity. This phenomenon is not only common in low-wage jobs (where minimum wage laws apply) but also in top echelon law, business, and sports firms (in which competition drives the initial wage above initial productivity). In all these cases, the resulting wage productivity differential adds to the (indirect) costs of hiring new workers.

There are no good studies of the full costs of hiring and training young labor-force entrants. Crude approximations can be inferred, however, from government training programs and other observations. The Department of Labor has computed the direct and administrative costs of training young workers in a variety of federal programs. These estimates average roughly $6,500 per year. These estimates, however, exclude the costs that result from wages paid in excess of initial productivity. Given the constraint of minimum wages, this additional training cost is likely to be substantial. It is also likely that these figures place far too little value on the real cost of management time in small businesses. If all of these factors were considered, the true cost of an initial year's training could easily reach $10,000 per worker.

Productivity and retention are keys to cost recovery

Whatever the actual costs of training new workers, no business would incur them unless there was some hope of later recovery. The hope here rests on two phenomena: productivity improvements and employee retention.

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New workforce entrants, although expensive, rapidly acquire productive skills. These workers are initially confronted with an array of new norms and responsibilities, and they will have to master most of them just to keep their jobs. Indeed, those who do not are likely to be dismissed in short order, since the failure to progress implies continued training losses. On the other hand, those new workers who do master initial skills will see their productivity grow rapidly. Given their initially limited skills and experience, the resulting percentage gains in productivity are likely to be impressive. Even large productivity gains, however, do not necessarily imply the recovery of initial training costs. Productivity must first exceed wages before cost recovery begins. Hence, the first prerequisite of cost recovery is the attainment of productivity that exceeds the wage rate.

The second determinant of eventual cost recovery is time. Productivity in excess of wages assures some cost recovery. To generate a sufficient productivity "surplus," however, a worker must maintain that differential for a period of time. Were a worker to leave his first employer immediately after his productivity exceeded his wage, little or no cost recovery would occur. Employee retention beyond that critical juncture is the only basis for recovering training costs.

During this critical period—when productivity exceeds wages—it is difficult to hold onto newly-trained employees. These workers now have a market value (their productivity) that exceeds their wage. They, as well as competing firms, will begin to recognize this differential and seek to exploit it. In professional sports this gives rise to "free agents" and superstardom. In more mundane business environments, this differential generates increased job search and competing job offers. The result is an increasingly risky trade-off between attempted cost recovery (by holding wage increases below productivity gains) and employee retention (by reducing or eliminating the wage differential).

Unfortunately, small businesses are at a substantial disadvantage in this game. On average, initial attachments last just over two years. This length of employment would appear to provide ample opportunities to recoup at least some of the initial training costs. However, there is substantial variation around this average, both within and across firm-size categories. The smallest firms, those employing fewer than 20 workers, retain initial workers for only 1.9 years on average. By contrast, the largest firms, employing at least 5,000 workers, keep initial workers 2.4 years, or about 26 percent longer.

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This difference is also apparent if we examine the percentage of initial workers who stay with their first regular employer throughout the observation period. The observation period of this study spans twelve years. However, initial attachment may begin at any time during that period. For the most part, the observations cease nine years after initial attachment. Within this time frame, only 1.2 percent of all initial workers stayed with their first regular employer. Clearly, new workforce entrants are not a good source of long-term employees. There are, however, some differences between small and large firms. The largest firms are more than twice as successful in converting initial attachments into quasi-permanent employment. Although the percentages are still small (0.9 percent versus 2.5 percent), this difference gives larger firms an advantage in recouping the entire costs of early work experience and training.

This study does not provide information about the reasons for more extended employee retention at larger firms. Such firms typically provide greater fringe benefits, including pension plans that encourage retention among younger workers. And by their very nature, large firms also offer a greater variety of work experiences and opportunities for internal career advancement. In addition, large firms have a greater probability of themselves surviving. Last, but not least, larger firms typically pay higher wages, thus reducing the attraction of external job opportunities.

Wage gaps and raise gaps

The disparity between the wages paid by large and small businesses goes a long way towards explaining the outflow of small-business employees. The largest corporations pay initial employees wages that are twice as high as those paid in the smallest firms. The average new worker in a very small firm was paid only $5,878 in his first year, while the largest corporations paid their initial employees an average wage of $11,407.

Some of the wage differences between large and small firms are related to their industry affiliations. Retailing, for example, generally pays lower wages than manufacturing. Because small firms are over-represented in retailing, their relative wages will necessarily be lower. Even *within* broad industry groups, however, small firms still offer lower initial wages. In wholesaling/retailing, for example, small firms paid an average wage of $5,221 in the first year of attachment. Large firms, however, paid $5,476. In other industry groups the differences were much greater. In business and personal

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services, initial wages were more than twice as high in large firms ($12,849) as in small firms ($5,211).

The "net" disparity in the initial wages of small-firm and large-firm employees can be discerned by statistically controlling for industry differences and other factors (e.g., age and race of employees). When this is done, the wage gap between small and large firms remains wide. On a net basis, small firms pay their initial employees $2,563 per year less than large firms pay.

The higher initial wages paid by larger firms give them a competitive advantage in recruiting workers. To put it bluntly, large firms are in a position to "skim the cream" from the labor supply. Their high wage offerings assure a surplus of job applicants that allows corporations to select the most able and trainable workers. This advantage helps minimize the initial productivity loss that high wages would otherwise imply. Also, high wages increase retention probabilities, thereby increasing the prospects for recovery of training costs.

The ability of large firms to offer higher wages is largely attributable to their greater productivity. Large firms typically are more capital intensive than are small firms, and this higher ratio of capital to labor increases output per worker. Productivity is not the sole explanation of higher initial wages, however. All new labor-force entrants will require work orientation and training before reaching acceptable productivity levels. It is exceedingly likely, therefore, that large corporations are incurring a sizable wage loss on their initial employees. The ability of corporations to incur losses on new employees derives from their very size and the resources they command. Essentially, the hiring and training of new employees is a risky endeavor. To play the game with consistent success, a firm must be able to call on the "law of large numbers." If a firm hires a great many workers each year, it can safely compute and rely on the "odds" of retention and cost recovery. The same principle is evident in casinos and insurance companies: Large numbers provide a stable expectation of profit. By contrast, small firms are typically confronted with an all-or-nothing expectation: The loss of just a few new workers implies a net loss for initial recruitment and training. As a consequence, small firms, with their meager resources, simply do not have either the numbers or the resources to play the high-stakes hiring game. Small numbers force them to play with lower stakes—that is, lower wages.

This also means that large firms have the option of "kidnaping" trained workers from small firms. Because small firms cannot com-

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pete effectively in wage offers, large firms will always have a reserve supply of trained employees available. In effect, the training efforts of small businesses provide the ultimate hedge for the risk large corporations incur when they hire and train new workers.

The enticement large corporations can offer small-business employees is clearly reflected in the wage gains of those who move from one employer to another. On average, workers who stay with their initial small-business employer enjoy steady wage increases of roughly 3 percent per year (after inflation). This is nearly double the wage growth for workers who begin and stay with a large corporation. However, this relative gain is insignificant when compared to the abrupt wage gains lavished on workers who move from small to large businesses. On *average*, the first-year wage gain for workers leaving small firms and entering large ones is a staggering 23 percent. To achieve a comparable gain, a newly-trained worker would have to stay with his small-business employer roughly seven years! That is a very high price to pay for firm loyalty.

The raises that accompany labor transfers from small firms to larger ones seem to confirm the dilemma facing small businesses. The extensive training offered in small businesses presumably leads to rapid increases in productivity. In the process, trained employees acquire more marketable skills and become more attractive to large firms. The larger firms, in turn, are able to bid away these trained workers with significantly higher wages. The larger firms are then in a position to offer wage premiums, not only because of their greater size and labor productivity, but also because of their ability to avoid initial training costs.

Compensation for kidnap?

The preponderant role of small businesses in providing initial work experience and training opportunities for the U.S. labor force is evident. It is also evident that many of the benefits of this early work experience are being reaped by larger firms. Small firms are losing over 30,000 newly-trained workers (net) each year to larger firms, and these workers represent an investment of $200-300 million. At a minimum, this implies that larger firms are saving substantial training costs. It also suggests that small firms may not be recouping their full training costs, and are thus being penalized for their training efforts.

The corporate kidnaping of small-business employees raises several questions of policy. The nation clearly has a vital interest in

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promoting human capital development, an interest evident in the billions of dollars spent for public-sector training programs and subsidies to private training efforts. The question remains, however, whether these resources are being allocated fairly to small businesses. For the most part, large firms are best positioned to acquire and administer public-sector training subsidies. As a result, they have received most of the public-sector outlays and tax expenditures intended for manpower development. This is clearly inconsistent with the relatively minor role of large corporations in providing initial work experience and training opportunities.

More public expenditures or targeted tax subsidies for training and development are unlikely to close the apparent gap between the small-business training effort and its compensation. As a rule, small businesses simply are not equipped to participate in federal training programs (e.g., as subcontractors) nor can they take advantage of available tax subsidies. Their size precludes the identification of available manpower subcontracting opportunities or tax breaks, as well as executing the attendant paperwork.

Under these circumstances, the most effective mechanisms for compensating small businesses for their human capital development are likely to be of a more general nature. A general reduction in corporate tax rates imposed on small businesses would be one such approach: Such a reduction could significantly help small businesses recoup more of their training costs. Mechanisms for reducing initial training costs could also be explored. One possibility is some adjustment in the minimum wage, especially as it is applied to youth. Another possibility would be to provide "youth training vouchers" redeemable for *cash* (not tax credits). A more general, and almost radical, response would entail stepped up vocational training and work orientation in the schools.

These general policy recommendations are motivated by the recognition that: (1) small businesses are presently providing most initial work experience and training opportunities; (2) a substantial amount of that investment is being transfered to larger businesses without compensation; (3) most public training subsidies now go to large businesses. However, one could respond that no remedial policy initiatives are necessary since small businesses already provide the necessary training. Considerations of equity aside, such a policy is terribly inefficient. If small businesses are not recouping their training investments, their incentives to provide early work experience and training will be diminished. The issue is not so much whether they are doing much initial training now (they are),

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but how much *more* they might do if their efforts were more fully compensated. From an efficiency standpoint, the motivation for additional incentives is the expectation that small businesses would increase the number and intensity of initial work experience opportunities, especially for youth. In view of our astronomical youth unemployment rates, any expansion of initial work and training opportunities should command high priority.

CONTRIBUTORS

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Cooperative regulation: environmental protection in Great Britain

DAVID VOGEL

A growing number of politicians, editorial writers, academics, and business leaders have been urging that the public and private sectors work together more closely in order to improve the performance of the American economy. Much attention has naturally focused on Japan, whose system of business-government cooperation has become widely admired in the United States. Yet while Japanese institutions function extremely well in many respects, Japan hardly provides a model of effective government regulation, the one arena in which the aims of American business and government most conflict.

If one examines Japanese environmental protection policies, for example, the shortcomings of the close ties between business and government emerge clearly. The singleminded commitment of both institutions to rapid industrial development in the post-war period has exposed the Japanese public to considerable discomfort and injury; by the late 1960s Japan was literally the most polluted nation in the world. It was only after a series of widely-publicized outbreaks of a number of particularly horrible pollution-related diseases that the Japanese government first attempted to balance its commitment to economic expansion with the protection of public health and amenity. While the Japanese have devoted con-

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siderable resources to improving their physical environment since the special "Pollution Diet" of 1970, controversy continues: There have been violent demonstrations, the public humiliation of corporate executives, and a series of protracted, expensive, and extremely bitter lawsuits. The Japanese economy has been able to absorb considerable expenditures on pollution control without impairing its international competitiveness, but the Japanese still find it difficult to integrate environmental concerns into their political system.

Looking to Britain

If we are searching for an alternative model of effective business-goverment cooperation in the area of social regulation, we should look to Great Britain. The British government does many things very poorly—particularly in areas affecting the economy—but regulating industrial emissions and controlling land use are not among them. Britain has the oldest system of environmental controls of any industrial society: The basic legal and administrative framework of its system of air pollution control dates from the 1860s. In the decades following World War II, Britain has made considerable progress in improving the quality of its air and water and has preserved much of the character and beauty of its countryside and coastal areas. It has done so, moreover, without measurably impairing the economic performance of British industry; Britain's economic difficulties over the last half-century do not stem from its system of environmental regulations. On the contrary, British regulatory authorities have pursued a consistent policy of close cooperation with industry. They continue to rely more on persuasion and voluntary agreements and less on legal coercion than any other industrial democracy.

When compared to the other OECD nations, Britain's environmental policy must be judged a considerable success. It has led to far less antagonism between industry and government than we find in the United States, the Netherlands, or Sweden, and has been far more effective than the policies of France and Italy. In addition, the British have been more successful in integrating environmental pressure groups into their existing political institutions than either the Germans or the Japanese. According to a recent survey conducted throughout the European Economic Community (EEC), the British public is significantly less dissatisfied with the efforts of its government to protect the environment than are the Italians,

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French, Danes, Belgians, Dutch, or West Germans.[1] The contrast with America is particularly striking: In no other industrial country have environmental regulations created as much antagonism on the part of business or produced as much conflict between government and environmental organizations.

The British experience demonstrates that there is indeed a sensible alternative to the American adversarial style of regulation. It is in fact possible for a pluralist democracy to regulate business reasonably well without making the regulatory process into an ideological, political, and legal battleground. Moreover, in view of the similar political and cultural traditions of the United States and Great Britain, particularly when compared to those of Japan, the British regulatory system might well have some lessons to teach us about how to improve our own regulatory practices. These lessons will have very significant limitations—no regulatory scheme can be transplanted entirely—but are important nonetheless.

As one would expect, there are a number of similarities between the politics of environmental protection in Britain and the U.S. Both nations have a long tradition of public interest in environmental matters; the "countryside" in British political culture has historically occupied a position analogous to the "wilderness" in the United States. Beginning in the mid-1960s, public concern with the quality of the environment increased in both countries. The membership of existing environmental organizations increased considerably—for example, the number of local Amenity Societies in Britain grew from 550 in 1966 to 1250 in 1975—while a number of new, more activist pressure groups, including a chapter of Friends of the Earth, and the Conservation Society, was formed. The environmental movements in each are relatively non-partisan, nonviolent, and moderate in political outlook. In addition, many of the environmental conflicts that have recently surfaced in Britain—such as those over the siting of a third London airport, the construction of roadways in rural and urban areas, the legal limits on size of trucks, the lead content of gasoline, toxic waste disposal practices, the protection of endangered species, and the appropriateness of nuclear power—are quite similar to those in the United States.

A permanent Royal Commission on Environmental Pollution was established within a few months of the U.S. Council on Environmental Quality, while the organization of a Department of the

[1] David Handley, "L'Ecologie et Les Attitudes Politiques des Frances," unpublished paper, University of Geneva.

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Environment in Britain closely followed the establishment of the Environmental Protection Agency. Between 1969 and 1974 each nation enacted a number of important environmental statues. Four major environmental laws were enacted by the American government—the National Environmental Policy Act (1969), the Clean Air Act Amendments (1970), the Federal Water Pollution Control Act (1972), and the Noise Pollution and Control Act (1972)—while three were approved by Parliament—the Deposit of Poisonous Waste Act (1972), the Water Pollution Act (1974), and the Control of Pollution Act (1974). All were enacted with substantial bipartisan support.

Systematic informality

These comparisons, however, are deceptive. In spite of the common roots of their legal systems, the administration of environmental controls in the United Kingdom and the United States could not differ more sharply. The contrasts in the public policies of the nations are most dramatically revealed in the area of pollution control.

The regulation of most industrial sources of air pollution in Great Britain is under the jurisdiction of Her Majesty's Alkali and Clean Air Inspectorate. Originally established in 1863 to regulate the hydrochloric acid produced by the manufacture of alkali, the responsibilities of the Inspectorate have since expanded steadily. At present they encompass 60 separate industrial processes, or approximately 2,200 plants. These include virtually all major industrial sources of air pollution, including those of nationalized industry. Other stationary sources of air pollution, such as those from individual households, are regulated by local authorities, while vehicle emissions are the responsibility of the Department of Transport. The Water Act of 1973 established ten regional water authorities throughout England and Wales, each roughly corresponding to a major river system. In addition to controlling industrial emissions, they are also responsible for sewage disposal, flood control, and water supply. A National Water Council acts as a coordinating body and establishes national guidelines for water quality. Overall responsibility for pollution control policy in Great Britain rests with the Central Unit on Environmental Pollution of the Department of the Environment, while the coordination of environmental policy for Scotland, Wales, and Northern Ireland is the responsibility of their respective Departmental Secretaries.

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In contrast to the United States, both the courts and the national legislature play a relatively minor role in shaping British environmental regulations. In unusual cases, regulatory issues may be referred to the High Court for adjudication, but only with the consent of the minister whose department is responsible for enforcing the statute in question. The decisions of both the Alkali Inspectorate and the Regional Water Authorities may be appealed to the appropriate minister, usually the Secretary of State for the Environment. At his discretion he may choose to hold a formal hearing, but he is not bound to follow the recommendations of the hearing officer. This, however, occurs relatively infrequently; firms rarely challenge regulatory authorities in the courts. Individuals do have the right to sue polluters under various common-law doctrines, but these are limited in scope and have become less important in recent years. The environmental statutes approved by Parliament have been primarily administrative in nature, essentially establishing a framework for policies that are then implemented by civil servants.

The distinctive hallmark of the British system of pollution control is its flexibility. According to an official government document, "authorities, both central and local, are expected to operate on the philosophy that standards should be reasonably practicable." This principle was made explicit in the Alkali Act of 1874, which specified that polluters should use the "best practicable means" (BPM) of "preventing the discharge into the atmosphere of noxious gases." The Alkali Inspectorate defines "practicable" in three dimensions: local physical conditions and circumstances, corporate financial resources, and the current state of technological knowledge. "Means" refers not only to the installation of pollution control equipment, but also to its maintenance and design, as well as to the operation of the plant itself. Each "scheduled" plant is assigned its own emission limits by the Alkali Inspectorate, which is then responsible for monitoring their enforcement. All sources of effluent discharged into inland water, estuaries, and inshore seas must first be granted a "consent" by a Regional Water Authority. These are individually negotiated with each polluter and are established to reflect the nature of the substances being discharged, the capacity of the river system to absorb them, and the ultimate disposition of the water supply. They may be either unconditional, or subject to such factors as the duration of the discharge, its rate, quantity, and composition. Unlike in the United States, where the discretion of regulators has been severely circumscribed by the

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courts and the legislature, inspectors in Great Britain continue to have plenty of flexibility to take into account local circumstances and make suitable decisions. They are given plenty of autonomy and are trained to be decision makers with as much responsibility as possible.

Finding the "best practicable means"

The principle of BPM means that the costs of compliance are an important factor in establishing emission requirements. Even when improved pollution technology is available, plants are not required to install it if doing so would impair their economic viability. Only new plants are required to install improved abatement technology; older facilities are generally given additional time to comply, depending on the projected life of their existing pollution control equipment or that of the plant itself. Field inspectors consider financial hardship a legitimate justification for delayed or reduced compliance, and are extremely reluctant to enforce regulations that will create additional unemployment. As a result, the actual enforcement of emission controls varies with the economic health of particular industries and regions, and with the state of the economy as a whole. In contrast to the United States, the British government does not use environmental standards as a device to force companies to develop new techniques of pollution control; instead BPM is regarded, in the words of one of the first Chief Alkali Inspectors, as an "elastic band," tightening "as . . . science develops and places greater facilities in the hands of the manufacturers." He added:

> When necessary it could be shown that this phrase ["best practicable means"] would give greater security to the public than would the adoption of any fixed standards, at the same time pressing with less severity on some of the manufacturers, but more equally on all.[2]

The principle of BPM also means that industry-wide emission requirements can be modified to meet local environmental conditions. Thus, if there are relatively few other local sources of a particular pollutant, or if the prevailing winds or river conditions allow emissions to disperse naturally, requirements are accordingly less severe.

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[2] Quoted in Timothy O'Riordan, "The Role of Environmental Quality Objectives in the Politics of Pollution Control in Progress," in *Resource Management and Environmental Planning*, ed. Timothy O'Riordan and R. Kerny Turner (New York: John Wiley & Sons, 1980), p. 225.

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Lord Ashby, the first chairman of the Royal Commission on Environmental Pollution, recently observed:

> There is a striking contrast between the style of environmental legislation in Britain and in the USA. British lawmaking is piecemeal, reluctant, never wanting to pass statutes which promise more than could be performed. Some American lawmaking is unlike this; for example the US Water Pollution Control Amendment Act, 1972, which aspired to make all rivers fishable and swimmable by 1985.[3]

British environmental legislation contains no statutory deadlines and does not require that emission standards be based solely on either technical or health criteria, as is true in the United States. In general, the British make less use of both emissions standards and general environmental quality standards. The Annual Report of the Alkali Inspectorate does include a series of appendices that list "presumptive standards" for most classes of measurable emissions from plants under its jurisdiction. These standards, which are established after extensive consultation with the industries that have to adhere to them, serve as guides to individual companies and field inspectors; a firm is "presumed" to be in compliance if it meets them. However, they can be and are exceeded without a firm's necessarily being in violation of the law. While the British have recently been making greater use of both emissions and general environmental quality standards, this is primarily a response to pressures from the EEC. The latter's efforts to harmonize environmental regulations among its member states have met with considerable resistance from the British, who contend that their more pragmatic and piecemeal approach is, in the long run, both more efficient and more effective. As the Secretary of State for the Environment wrote in 1977:

> Except in clearly defined cases, we believe that it is better to maintain gradual progress in improving the environment in light of local circumstances and needs than to operate through the formulation of rigid national emission standards which may in particular circumstances be either unnecessarily harsh or insufficiently restrictive.[4]

Britain's reluctance to establish strict legal requirements for pollution control reflects the preference of its regulatory officials for securing compliance through persuasion and negotiation. British pollution control agencies are extremely reluctant to prosecute companies or publicly criticize them. As long as companies are making

[3] Lord Ashby, "The Politics of Pollution: Reflections on the Evolution of Environmental Policy in Britain, 1800-1980" (Paper presented at Cornell University), p. 11.
[4] Quoted in O'Riordan, "Environmental Quality Objectives," p. 239.

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"reasonable" efforts to reduce emissions, they are considered law-abiding. Prosecution is thought to reflect badly on the image of regulatory authorities and is viewed as a last resort, to be used only when companies appear to be acting in "bad faith." This outlook was first expressed by Robert Angus Smith, the first Chief Inspectorate under the Alkali Act. He noted in 1872 that:

> Some of the public would have preferred to see [us] frequently in court with cases of complaint, but I knew well that . . . habits must grow, and that to torment men into doing what required much time to learn was to return to the old system of teaching by the cane, instead of the intellect.[5]

One of his successors wrote nearly a century later: "Experience has convinced me that a spirit of mutual confidence and goodwill between inspectors and industrialists is essential to progress." His successor in turn argued in his annual report that:

> Abating air pollution is a technological problem—a matter for scientists and engineers, operating in an atmosphere of cooperative officialdom. Great care has to be exercised by all to prevent the development of adversary attitudes.[6]

Not surprisingly, while self-regulation has fallen into disrepute in the United States in recent years, the British continue to make extensive use of it. Companies are often expected to monitor each other's adherence to standards that have been negotiated by their trade associations and to report violators to the government.

The uses of trust

Crucial to the effectiveness of the British regulatory system is the mutual respect that exists between industrialists and regulatory officials. The former display a remarkable degree of confidence in both the technical competence and good judgment of pollution control inspectors. With rare exceptions, they regard the pollution abatement measures required of their firms as "reasonable"; indeed, company engineers frequently seek out the advice of their counterparts in government in order to improve their pollution-control performance. Each inspector employed by the Alkali Inspectorate has a degree either in chemistry or chemical engineering, and is required to have had at least five years of experience working in

[5] Quoted in Maurice Frankel, "The Alkali Inspectorate," *Social Audit*, (Special Report, Spring 1974): 5.
[6] Gerald Rhodes, *Inspectorates in British Government* (London: George Allen and Unwin, 1981), p. 145.

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industry. Officials in turn believe that most plant managers and company engineers are genuinely interested in curtailing emissions as much as possible. As one student of British air pollution control policy put it, the Alkali Inspectorate's "relation to the manufacturer is more like that of a doctor getting the patient's cooperation in treating a disease than of a policeman apprehending a culprit." One official summarized the contrasts between the British and the American approaches to enforcement in the following terms:

> We look upon our job as educating industry, persuading it. We achieve more this way. The Americans take a big stick and threaten, "solve your problem." We say to industry, "Look, lads, *we've* got a problem." In this way we've got industry well and truly tamed.[7]

The 1974 report of the Royal Commission on Environmental Pollution put the alternative confronting British pollution control authorities this way:

> . . . either we have, as now, an authority which because of its close relationship with industry and consequent understanding of the problems is able to assess the technical possibilities for improvement in detail and press for their adoption; or an authority which sees its job as one of imposing demands on industry and which, because of the sense of opposition this approach would create, could not obtain the same co-operation by industry in assessing the problems and devising solutions.[8]

The contrast in the approaches of the British and American governments toward regulating industry is similar to the contrast in the division of national and local authority in each country. Local governmental units in Britain are not allowed to enforce stricter pollution control standards than those deemed appropriate by national authorities; however, on occasion the national government will allow standards to be relaxed in response to community pressures. In the United States, it is precisely the opposite. In some specific areas, state and local governments can impose requirements on industry that are stricter than those of the federal government, but if a particular state or community wishes to relax national environmental standards in order to maintain or attract industry, they may find it difficult. Paradoxically, while the United States both has a federal system and encompasses a much larger and more diverse geographic area, air and water pollution-control policy is actually far more centralized in the United States than in Great Britain. Since the late 1960s, the authority of state and local

[7] Timothy O'Riordan, *Environmentalism* (London: Pion Ltd., 1981), p. 237.
[8] Rhodes, *Inspectorates*, p. 149.

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governments to control air and water pollution has been substantially reduced, even as the federal government's authority has increased significantly. In Great Britain, on the other hand, local governmental units continue to play a relatively important role both in setting standards and in their enforcement.

Is British regulation less strict?

It is obviously difficult to compare the severity of environmental regulations in the two countries—if for no other reason than that the British system operates more informally. It is striking, however, that while the appropriateness of using cost-benefit analysis to evaluate government regulation of industry is bitterly debated in the United States, it has failed to arouse much controversy in Great Britain. The explanation is a simple one: Its use would be superfluous. American corporate executives, and academics sympathetic to them, urge the use of cost-benefit analysis precisely because so much of American environmental regulation is written and enforced without reference to the costs of complying with it. In a sense, the use of cost-benefit analysis represents a surrogate for the inability of American industry to have its interests taken more seriously. The British business community has less need to urge the establishment of a formal system of cost-benefit analysis precisely because economic considerations are already integrated into its regulatory procedures. As a British government official noted in 1970:

> If money were unlimited there would be few . . . problems of . . . pollution control that could not be solved fairly quickly. We have the technical knowledge to absorb gases, etc. The only reason why we still permit the escape of these pollutants is because economics are an important part of the word "practicable."[9]

There is in fact one area in which a direct comparison of the effects of regulation is possible: energy development. The contrasts are dramatic. Although oil was discovered in Alaska before it was discovered in the North Sea, the latter area went into production well before the former—even though it presented far greater technical difficulties. (In fact, the same company—British Petroleum—was involved in both developments.) The development of Alaska's oil and natural gas reserves was delayed for a considerable period of time as a result of objections by environmentalists, even though

[9] Frankel, "Alkali Inspectorate," p. 9.

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rapid development was strongly favored by the government and residents of Alaska. While some of the residents of Scotland were concerned about the impact of energy development on their local communities, the development of North Sea oil proceeded as rapidly as was technically and economically feasible. It did so, moreover, without adversely affecting the physical beauty of the Scottish countryside and coastal areas.

Unlike the situation in the United States, permission to engage in off-shore drilling was never an issue in Britain, since the oil-bearing waters off the coasts are controlled by the central government. However, both nations have had to establish environmental standards for the establishment of on-shore facilities for the importation of energy from off-shore. Michael Thompson's account of the contrast between British and American regulatory requirements is worth quoting at length.

> Recently California and the United Kingdom have approved sites for Liquid Energy Gas (LEG) terminals. In this, and perhaps this alone, they are the same. After a long drawn-out process in which it proved impossible to approve any of the proposed sites California finally, with the help of a new statute passed expressly for the purpose, was able to give approval for an LEG facility at the remotest of all the sites on the list of possibles—Point Conception.
>
> Scotland has a longer coastline than California and most of the country is very sparsely populated (less than 25 persons to the square mile) and yet the approved site, at Mossmorran and Braefoot Bay on the Firth of Forth, lies within the most densely populated part of the entire country (with a population density of between 250 and 500 persons per square mile). Moreover, laden tankers will pass within a mile or so of Burntisland (an industrial town) and sometimes within 4 miles of Edinburgh—the capital city of Scotland! If the California siting criteria (explicit in Statute 1081) were to be applied to the Scottish case it would be quite impossible to approve the Mossmorran/Braefoot Bay site and, if the United Kingdom criteria (implicit in the Mossmorran/Braefoot Bay approval) were to be applied to the Californian case, any of the suggested sites could be approved which means that the terminal would go to the first site to be suggested—Los Angeles harbour.[10]

The counterpart of the "family-like" cooperation that exists between industry and government in Britain is the relative absence of effective opportunities for participation by other political constituencies. The Trade Union Council is consulted by the Alkali Inspectorate in the setting of presumptive standards and both the

[10] Michael Thompson, "Postscript," unpublished paper (Luxemburg, Austria: Institute for Applied Systems Analysis, 1982).

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regional water councils and local air pollution authorities are responsive to elected local officials. In addition, individual citizens, community organizations, and amenity groups do use the hearing procedures established under the Town and Country Planning Act of 1947 to press for improvements in pollution control as a condition for granting a firm permission to expand or relocate. But while British officials are more accessible than their counterparts in most European countries, compared to the United States their system of pollution control is a remarkably closed one. The information that officials may disclose to the public is severely circumscribed by law and limited even further by custom: With rare exceptions both the air and water emissions authorized for each individual factory, as well as the extent to which firms have complied with them, remain secret. Even the names of companies that have been prosecuted are not made public. Moreover, the negotiations between industry representatives and government officials usually take place in private, with little or no opportunity for public participation.

It can be argued that companies in Britain cooperate with regulatory authorities because the latter are too lax. This point has often been made by many of the newer British environmental organizations established over the last 15 years. They especially resent the extraordinary secrecy that surrounds the relationship between industry and the regulatory authorities. As one journalist put it in *The New Scientist*, "In Britain today, data on individual emissions are guarded more closely than military blueprints." Yet it is striking that even many of the bitterest critics of this secrecy are nevertheless prepared to concede that pollution control officials are in fact conscientious and dedicated, and that it would be unfair to describe them as "captives" of the companies whose pollution they are responsible for controlling.

Final result: a cleaner environment

The available evidence suggests that the British commitment to pollution control is in fact a serious one. While Britain, like every other industrial society, continues to have a number of serious local pollution problems, the overall quality of its physical environment has improved considerably in recent years. According to the periodic surveys conducted by the National Water Council, the water quality in England and Wales has steadily improved throughout the post-war period. As of 1980, nearly three-quarters

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of the lengths of English and Welsh rivers were unpolluted and less than 5 percent were considered "poor" or "grossly polluted." These figures represent an improvement over 1970 and also compare favorably with those for other members of the EEC.[11] Twenty years ago there were no fish in the lower Thames and the river emitted a disgusting smell; as of 1977, the river contained more than one hundred species of fish and was largely odorless. In the early 1950s London was an extremely dirty city, with high levels of smoke and sulphur dioxide; today, although London remains an important manufacturing center, its air is as clear as that over East Anglia.

Since 1960, national emissions of smoke have fallen about 80 percent, and over the last decade emissions of sulphur dioxide, nitrogen oxides, and hydrocarbons have all recorded declines.[12] Between 1973 and 1976 lead emissions from plants regulated by the Alkali Inspectorate were halved, arsenious oxide emissions were reduced by nearly two-thirds, and emissions of vinyl chloride monomer from PVC plants declined by more than three-quarters. Moreover, the cost involved in all these efforts was not trivial, especially considering the undistinguished performance of the British economy. According to the most recent available figures, total expenditures on pollution control in Britain were estimated at 2.5 billion pounds per year, or between 1.5 and 2 percent of GDP at factor cost.[13] For the 1977-78 fiscal year, the total annual cost of water pollution controls for all private industry in the U.K. was estimated at 200 million pounds, and of air pollution, 560 million pounds. While direct comparisons are difficult, according to data gathered by OECD for 1975, the percentage of British private investment in pollution control was less than that of the U.S. and Japan, roughly comparable to that of Germany and the Netherlands, and greater than that of France, Finland, Denmark, Norway, and Sweden.

Thus, in many respects, the British approach toward environmental protection might be viewed as a model for regulatory reformers in the United States. It enjoys a relatively high degree of

[11] Great Britain, "Pollution Control in Great Britain: How it Works," Department of the Environment, Central Unit on Environmental Pollution (London: Her Majesty's Stationary Office, 1976), p. 27.
[12] Great Britain, "The United Kingdom Environment 1979: Progress of Pollution Control" (London: Her Majesty's Stationary Office), pp. 3-6.
[13] Great Britain, "Digests of Environmental Pollution with Statistics: Pollution Control Costs," No. 4, Department of the Environment (London: Her Majesty's Stationary Office, 1981).

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legitimacy among the diverse constituencies affected by it, while at the same time it manages to avoid the time-consuming and expensive lobbying and legal wrangling that exists in the United States. While Britain has devoted fewer resources than the United States to reducing air and water pollution over the last decade, what it has committed appears to have been allocated much more efficiently. Environmental policy in the U.K. has also been free of the unpredictability and abrupt changes in direction that have taken place in the United States. Thus, just as Japan might have something to teach us about how government and business can work together to promote industrial growth, so Britain might be in a position to instruct us in the virtues of cooperation between business and government in the area of government regulation.

Regulation and political culture

Unfortunately, neither happens to be the case. Environmental regulation, like public policy in general, does not take place in a vacuum. Each nation's approach to regulating industry, like its policies for promoting industrial growth, is the product of a distinctive political traditions and institutions. We could no more establish the Alkali Inspectorate as a unit of the Environmental Protection Agency than we could transplant MITI to the Department of Commerce. *For in many important ways, each nation controls industrial emissions in much the same manner that it regulates everything else.* Thus Britain is a nation of remarkably few laws, rules, and regulations, while the United States, as the most casual glance at the Federal Register reveals, relies heavily on formal rules and procedures to control governmental and corporate behavior. If one compares the British and American approaches to insurance regulation, equal employment, banking regulation, consumer protection, occupational health and safety, or securities regulation, a clear pattern emerges: In each case Americans rely heavily on formal rules, often enforced in the face of strong opposition from the institutions affected by them, while the British continue to rely on flexible standards and voluntary compliance —including, in many cases, self-regulation.

How can we account for these significant differences in regulatory styles between two nations whose political traditions are in many respects so similar? Both the effectiveness and the legitimacy of British environmental policy appear to rest on three elements, none of which exists in the United States to the extent each does in Brit-

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ain: a highly respected civil service, a business community that places a high value on acting "responsibly," and a public that is not unduly suspicious of business-government cooperation.

As numerous scholars have noted, Britain in the last quarter of the nineteenth century witnessed an important cultural backlash against the values of industrialization. Just as England neared the pinnacle of her industrial strength, the British business community suffered an erosion of its competitive spirit. Instead of seeking to expand its political and cultural influence, it was coopted by a resurgent aristocracy; rather than continuing industrial growth and expansion, it sought economic stability and social acceptability. As Martin Weiner writes in *English Culture and the Decline of the Industrial Spirit, 1850-1980*, "More and more in the twentieth century, the higher echelons of the larger businesses were dominated by men whose standards had been formed in the gentlemanly mode." Weiner quotes one writer of the 1930s: "A gentleman, we must realize, never strives too much; it is not considered the thing." The erosion of the market ethos within the industrial sector was accompanied by a corresponding increase in the prestige of the civil service, particularly as the latter became dominated by aristocratic personnel and values.

The British system of pollution control was initially developed during this same period. It would certainly be an exaggeration to suggest that "a gentleman does not pollute his neighbor's rivers"; certainly firms in Britain over the last century have treated their surrounding environment as irresponsibly as those in any industrial society. But one important consequence of the desire for social respectability on the part of British industrialists in the latter part of the nineteenth century was their willingness to accept a variety of constraints on their pursuit of profits. To the extent that they assimilated non-market values, they became subject to a set of informal social controls that reduced the necessity for strict legal ones. Thus, the British regulatory system not only continues to assume "good faith" on the part of corporate managers; it remains absolutely dependent on it. The Alkali Inspectorate, for example, has no independent means to assess the ability of companies to invest in improved methods of pollution control; it must rely on the cooperation of the companies it regulates. Were managers in Britain less amenable to persuasion or less willing to compromise, the British government's approach to controlling pollution would not work.

Similar pressures do exist in some American communities, but

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not on a national or industry-wide scale. Trade associations in America are generally incapable of exerting any control over the conduct of their members, while a refusal to cooperate with regulatory officials or follow the example set by industry leaders does not carry the social stigma it does in Britain. While businessmen in America who "stand up" to regulatory agencies—even to the extent of violating the law—are often regarded as heros by other members of their industry, the opposite is true in Great Britain. For companies in Great Britain, a prosecution is considered a "black mark." A few years ago, a director of a chemical firm was pressured to resign from the governing body of the Chemical Industries Association because his firm had violated industry standards regarding the disposal of toxic wastes. America has remained very much a business culture. Unlike in Britain, the civil service reforms of the late-ninteenth and early-twentieth centuries did not diminish the power or prestige of industry. While in Britain the professions and the civil service constitute an attractive alternative to employment in industry—and are thus capable of attracting first-rate talent—in America the pursuit of wealth through economic activity has remained the dominant interest of the nation's upper classes. Not only did business in America never develop an attitude of deference to public officials, but within the business community itself, executives continued to judge both their own performance and that of their peers almost exclusively by economic criteria: In a society without a Queen's Honors List, the only socially recognized measure of achievement in business is "the bottom line." Business executives in America continue to view government officials in much the same terms that they view their competitors: The challenges to profitability posed by each should be met as aggressively as possible. British businessmen are both less competitive with each other and more willing to cooperate with government officials.

The populist factor

The third critical factor affecting the context of regulation in the United States and Great Britain is the public's perception of business. In part because of the great success of the American corporation over the last century, the American public periodically expressed antagonism towards the economic and political power of large companies. On the other hand, in part because British firms have generally performed less well for several decades, the British public appears to worry less about the misuse of their power. The

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British may be less willing to work for large corporations, but they do not seem particularly to fear and distrust those who manage them. Britain lacks a strong populist tradition: Outside of segments of the trade union movement—whose concerns are narrow and do not include most areas of government regulation—the British public is far less hostile to "big business" than is the American. And in contrast to the American middle class, the British middle class does not appear to be as concerned about the "capture" of government by business; it also seems not to regard the pursuit of profits by large corporations as an intrinsic threat to its health and safety. Moreover, like the British business community, it shares a degree of confidence and trust in public officials that is generally lacking among both the American public and the American business community.

There are those in Britain who would prefer the same administrative "safeguards" that exist in environmental regulation in the United States. They urge increased disclosure, less cooperation with business, more prosecution, and greater opportunities for public participation in shaping of pollution control policy.

Their impact on public policy has, however, been rather limited. The lack of stronger public support for these changes—even among many of those active in the environmental movement—is part of the general deference toward administrative officials still exhibited by the British public; the latter have not been convinced that radical changes are necessary in order for their government to regulate corporate conduct effectively. In large measure, they are right: The British public receives significantly greater environmental protection than the rather limited political strength and access of the British environmental movement would suggest. And this is due in large measure to both the integrity and competence of British public officials and the willingness of British industry to cooperate with them.

American environmentalists and their supporters have been highly suspicious of any cooperation between business and government. Among the first preoccupations of the resurgent American environmental movement of the 1960s was countering the perceived threat to the environment posed by the political influence of business. Virtually every aspect of contemporary American environmental policy that distinguishes it from British policy—its frequent use of prosecution, its insensitivity to the costs of compliance, its centralization in Washington, its reliance on fixed rules and rigid deadlines, its limitations on administrative discretion—was original-

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ly proposed by pro-environmental groups little more than a decade ago. They successfully argued that unless an elaborate set of legal restrictions was placed on the decisions of both the newly-established regulatory agencies as well as on business, the latter would soon "capture" the former just as they appeared to have done so many times in the past. For American environmentalists, "cooperation" was equivalent to "cooptation"; the effectiveness of the "new" regulation was to be measured by the extent to which it met with resistance from industry. Making government and business into adversaries was not an unfortunate by-product of effective environmental regulation; for many it was considered the very definition of "effectiveness."

It is difficult to judge how realistic this fear of "cooptation" was. In all likelihood, had there been more cooperation from the outset, at least some of the inefficiencies and inanities of U.S. environmental regulations might have been avoided. But we also might have made less substantial progress in improving air and water quality over the last decade. In view of the absence of a tradition of effective business-government cooperation in this area, particularly at the federal level, as well as the historic pattern of business resistance to expansions of governmental authority, the case for a policy of "coercing" industry and restricting administrative discretion was not an unreasonable one. Since 1970, American companies have certainly spent considerably more on pollution control than those in Britain. For all its heavy-handedness, the American pattern of regulation *does* have two distinct advantages: It is capable of bringing about substantial changes in corporate practices in a relatively short period of time, and its effectiveness does not depend on the consent of the regulated.

Our competitive culture

To a certain extent, each society does have something to teach the other. The British would probably benefit from more clearly defined standards, a greater willingness on the part of government to prosecute, and increased opportunities for public participation in the policy process. For America, on the other hand, more flexible regulations and closer consultation with business might well result both in more sensible rules and more reasonable enforcement policies. In fact, there are some signs that the two systems are converging. Pressures from the EEC, whose approach toward regulating industry has been strongly influenced by the example of the

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United States, is forcing British authorities to adopt more rigid standards, while in the United States the changes in regulatory policy brought about by the Reagan administration clearly bring our regulations closer to those of the British.

But these changes only make sense at the margin. Were the British to attempt to enforce environmental standards that industry regarded as unreasonable, or conduct their negotiations with industry more publicly, the cooperation of business would be undermined. Similarly, to the extent that the American government attempts to consult more with business, or diminishes the public's ability to participate in the policy process, the legitimacy and possibly the effectiveness of American environmental policy become impaired. In a sense, our approach to regulating industry requires conflict between business and government in much the same way that the British approach depends upon cooperation.

Proposals to improve regulation, like those to transform the way we make economic policy, cannot be evaluated in isolation. For all the obvious advantages of a regulatory system based on "good faith" rather than mutual mistrust, the former may simply be incompatible with our commitment to both interest group and economic competition. Companies might like more reasonable regulations and more competent regulators, but would they be willing to surrender their right to challenge agency decision-making in the courts? Environmentalists might prefer industry to be more cooperative and law-abiding, but would they be willing to allow industry and government to sit down privately and negotiate pollution control standards? Equally important, our adversarial regulatory system is the counterpart of a highly competitive economic system: The conflict-ridden relationship between business and government in the United States is the political counterpart of the highly competitive relationships that exist *within* the American business community. To the extent that the British experience is any guide, a more cooperative and responsible business community might also be a less competitive one. Instead of constantly bemoaning the lack of cooperation between business and government, we should occasionally reflect on some of its virtues.

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Can immigration laws be enforced?

EDWIN HARWOOD

As Congress debates the shape of a new immigration act for the United States, one issue crucial to the debate has been surprisingly neglected: Whatever Congress and the administration decide is an appropriate immigration policy in the 1980s and beyond, can these decisions be enforced? Is it possible for the United States to implement and enforce *any* immigration policy, regardless of its content? We must raise this question because there is good evidence that our ability to enforce immigration policies has broken down. A narrow but crucial issue must be examined: Can the United States control the flow of immigration?

Doing more with less

The Immigration and Naturalization Service (INS), the federal agency charged with enforcing the nation's immigration laws, apprehended over 960,000 illegal aliens in FY 1982 and succeeded in returning 85 percent (810,000) to their home countries. From just under 100,000 a year in the early 1960s, apprehensions had risen to approximately half a million by 1972. By the late 1970s, the annual number had stabilized at approximately one million, of

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whom over 90 percent were Mexicans. These are impressive figures. Unfortunately, besides the huge number of apprehensions there is an undoubtedly larger number of aliens entering and remaining in the United States illegally.

Apprehensions partly reflect the rate of illegal flows into the U.S., which has increased dramatically over the past two decades. But they are also influenced by INS decisions on enforcement priorities and by the total level of funding available for pursuing illegal aliens. Between 1970 and 1978, the inflation adjusted increase in the INS budget was only 52 percent, from $105 million to approximately $160 million (1970 dollars), while the number of apprehensions tripled. The increase in "enforcement hours" during the same period was only 30 percent, due to the Carter administration's decision to shift INS resources away from enforcement activities (apprehending and removing illegal aliens), especially in the interior cities, and toward the provision of services (the adjudication of benefit and relief petitions for aliens). In many urban districts, the number of INS criminal investigators was reduced by half between the mid- and late 1970s, despite mushrooming caseloads.

Acknowledging that the INS "has been chronically underfunded, undermanned and neglected by the Department of Justice and Office of Management and the Budget," Congress authorized a substantial increase in INS funding to $428 million in FY 1982 and promised substantial additional funding in the event the proposed Simpson-Mazzoli Immigration Reform and Control Act is passed. It remains to be seen if this will suffice to provide for the dramatic increase in both the service and enforcement caseloads that have built up over the past decade. (The actual number of apprehensions, it must be noted, is much lower than the *potential* number that could be processed if the Immigration Service had more resources).

Why the "revolving door" turns faster

But the considerable gap between INS funding during the 1970s and its increased caseloads only partly explains why the U.S. has been losing control of its borders. There have also been changes in the legal and political environment, with which the INS must also contend, and these cannot easily be remedied by improved funding.

For a brief period in the early 1950s, apprehensions were as high as they are currently, due to INS Commissioner Joseph M. Swing's

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decision to launch a "wetback roundup" in the nation's interior. For that operation, INS was able to count on the assistance of hundreds of local law enforcement agencies across the nation, which it cannot count on today. Under the Carter administration, then Attorney General Griffin Bell discouraged local law officers from actively cooperating in INS sweeps and arrests of illegals on the ground that immigration law enforcement was a federal responsibility and local law officers were not authorized or competent to apprehend aliens suspected of being here illegally. In addition, local police in some of the larger cities with numerous illegal aliens worry that cooperation with the INS will make it harder for them to deal with crime in these communities because illegal aliens, fearful that they may be turned over to the INS, will not come forward with information.

Aliens also had fewer appeal and other due process rights thirty years ago, which made it easier to expel those caught up in the "wetback roundup." After the roundup, apprehensions dropped sharply, apparently because Mexican border jumpers realized that the Border Patrol meant business. Repeat offenders knew they would be sent to Port Isabel, Texas, for shipment by boat down to Vera Cruz, Mexico. "Interior repatriation" was a reasonably satisfactory deterrent because it increased the cost and inconvenience to illegal border crossers.

During the 1970s, this policy of repatriating Mexicans to distant parts of their country was ended, primarily because of pressure from the Mexican government. Most Mexicans are now returned directly to border checkpoints close to where they entered. Under the lenient "Voluntary Return Under Safeguard" policy the alien is spared the inconvenience of having to wait five to seven days in detention for a deportation hearing, and can easily make an attempt to re-enter, sometimes within a few hours of his apprehension. Border Patrol agents rightly describe the current situation as a "revolving door."

Today apprehensions, though high in number, are not of the same "quality" as those made back in the 1950s and 1960s. Many involve repeat border-jumpers, the overwhelming majority of whom are never processed for deportation (the civil action available to the INS under the Immigration and Nationality Act), let alone prosecuted under the criminal provisions of the Act. Thus, in 1961, over 12 percent of all aliens ordered to leave the U.S. were formally deported, rather than allowed to leave voluntarily. By 1971, this had dropped to 5 percent, and by 1982 to less than 2 percent

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of all illegal aliens ordered to leave. One very likely reason for the decline is that Congress and the federal courts have provided aliens with more appeals and other due-process rights over the past twenty years, and these have made deportation processing costlier to the INS. Combined with the rapid increase in political asylum appeals and the growing numbers of "suspension of deportation" and other relief petitions, understaffed immigration courts have little choice but to be as liberal as possible in granting voluntary departure.[1]

Both lawmakers and the public have come to realize that although the Immigration Service apprehends large numbers of aliens, this has not brought the problem of surreptitious and fraudulent entries under control. Because of the numbers involved—3 to 15 million illegal aliens are estimated to be living and working in the U.S.—the problem is not primarily one of tracking down and catching violators, but of deciding *which* of the potentially hundreds of thousands to go after.

Should INS policy emphasize the easy apprehensions that make the statistics look good, or assign more officers to the time-consuming but higher quality cases? Before trying to patch things up with new legislation, lawmakers need to look behind the statistics to understand what the INS is doing and, above all, why immigration law has become so much harder to enforce over the past thirty years.

What kind of crime is illegal immigration?

INS enforcement differs in crucial respects from other law enforcement efforts. For example, the INS seeks criminal prosecutions for only a very small percentage of aliens and citizens involved in immigration violations, even though in theory criminal sanctions could be imposed in almost all cases. Almost all violators are handled administratively through either the civil action of deportation or the discretionary grant of voluntary return. Indeed, most foreign nationals found to be deportable, whether before or after a deportation hearing, are not deported but instead receive either Voluntary Return Under Safeguard (for Mexicans) or Voluntary Departure. The latter is used mainly for overseas aliens, who

[1] In FY 1980 and 1981, INS received ten to fifteen times as many asylum applications as were received in previous years, due to the right accorded aliens by the 1980 Refugee Act to apply for asylum. By August 1982, 110,000 such appeals were pending.

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are given roughly 30 days to depart, after which time an order of deportation becomes automatic.

The INS is not bound by statute to grant voluntary departure, nor can it do so in the case of aliens convicted of crimes "involving moral turpitude," which include many felonies and some misdemeanor offenses. INS is generous, partly for humanitarian reasons, but also because frequent formal deportations would pose a logistical nightmare. The advantage of a liberal policy of voluntary return is that aliens waive their considerable appeals rights and, in some cases, pay their own overseas transportation. The disadvantage, of course, is that there is less incentive for aliens to play by the rules. If they are caught, the worst that happens is that they are asked to leave.

As a civil action, the advantage of deportation processing over criminal prosecution is that the alien does not have the same due process rights. If the alien has conceded foreign birth, the burden of demonstrating his right to be in this country falls on him and he must establish the manner, time, and place of his entry into the country, or otherwise show that he is authorized to stay. There are two other reasons why the INS does not charge and prosecute aliens under the immigration law's criminal provisions: First, immigration violations are not viewed as "real crimes," and second, given the large number of violators, immigration cases would overwhelm the federal courts even if they were taken seriously.

At first glance, an immigration offense resembles narcotics use or prostitution in that it is a consensual crime. This does not mean, however, that illegal aliens or members of the public may not be collectively or individually victimized. Some aliens are found suffocated in the trunks of "load" cars, or are injured or killed when their driver tries to outrun a Border Patrol sedan. Many are exploited by labor contractors who find work for them but overcharge them for housing or food in migrant labor camps, and by foremen who may demand kickbacks in exchange for jobs. Citizens may also be victimized indirectly as a result of job competition by illegals.

But what makes illegal immigration clearly different from most consensual offenses is the absence of public opprobrium that attaches to other "victimless" crimes. Indeed, considering the value Americans place on hard work, there is probably no stigma, but rather a good deal of grudging respect, for the alien doing stoop labor in the fields or operating an industrial sewing machine for $3.50 an hour—jobs many Americans would refuse at those wages.

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Public sentiment and the INS bind

Public ambivalence toward INS enforcement activities is a frequent complaint of INS officers. When a child is killed by an illegal alien driving under the influence of alcohol, the community wants to know why he was not removed. When a small child is murdered and the townspeople suspect that an illegal migrant worker was responsible (as happened in a small community in northern California not too long ago), an aroused citizenry and the local police become eager to cooperate with the Border Patrol in sweeping the *cantinas* and removing the illegals.

But when illegals are wanted as workers, INS officers encounter angry ranchers and business owners who may block their entry and verbally abuse them with epithets like "green Gestapo" or "storm troopers." When I accompanied several investigators on a raid of a small restaurant in a Virginia suburb near Washington, D.C., I observed an investigator get a tongue-lashing from the restaurant owner who asked him why he was hand-cuffing her Salvadoran dishwasher. Why, she wanted to know, was he not out catching real criminals, people who rob and mug? Despite the pollsters' finding of overwhelming public support for stronger efforts to curb illegal immigration, the attitude many Americans take towards individual illegal immigrants—those they know personally—ranges from live-and-let-live tolerance to actual sympathy.

That attitude sometimes changes. If a citizen loses his own job at the plant and wants to get even with the employer, he may decide to call in a tip. Or the illegal may be admirable until he fails to pay the rent, at which point the landlord may call the INS to get him evicted. A Filipino woman, jealous of another Filipina's attentions to her boyfriend, may report the woman to the INS and spur the investigators on by adding that the woman constantly boasts about her ability to elude the INS. Officers believe personal grudges are the motivation behind most tips. Hence, when specific enforcement actions are supported by citizens, it is usually because they want to punish an alien who poses a particular problem.

Much more typical of public reaction, especially in the case of aliens who have managed to acquire homes, stable jobs, and U.S. citizen children, is the outpouring of sympathy for the alien and his family from neighbors and others, who will sign petitions to politicians on the alien's behalf when they hear he has been picked up and is being threatened with deportation. Take the Israels, a

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Filipino family apprehended in Los Angeles on the basis of an anonymous tip phoned in to the INS. The *Los Angeles Times* reported how Ireneo and Josephina Israel had acquired a home after years of hard work, raised a family, and been active in church and community affairs.[2] "Where is their heart? Why can't they forgive us?" Mr. Israel is quoted as saying underneath a photo showing him with pleading arms extended. A close family friend, the *Times* explained, had gathered 400 signatures on a petition seeking Congressional intervention. When the INS director for the Los Angeles District Office was interviewed, he said that the Israels had been ordered deported twelve years before, had absconded, and were apt to do so again if released. "What it boils down to," he added, "is this: Do we disregard the laws of the land just because [the Israels] are nice people, or do we follow the law?" Americans appear to want the law enforced as a *general* policy but also want it bent in the individual case, which puts the INS in a difficult bind.

INS officers themselves are ambivalent about their enforcement activity when it involves the honest and hard-working illegal who comes up to do work that Americans will not do. Officers will readily tell an observer that they would be doing exactly what the illegals do if they could not support a family south of the border. They do not condone aliens entering and working illegally, but they do understand the illegals' motives.

Law without enforcement

Compared to other victimless crimes, the threshold at which criminal prosecution is triggered in immigration cases is high. The sentences meted out are also trivial in many cases, if convictions are obtained at all. When American ranchers have been caught arranging with smugglers to bring illegal aliens up, or aiding their escape during farm and ranch checks by the Border Patrol, INS officers have trouble getting successful prosecutions. A good example is the 1981 prosecution of ten Idaho farmers indicted for smuggling aliens. Local politicians were up in arms over the case; Congressman George Hansen wrote to the acting INS Commissioner to complain about "platoons of armed agents" arresting farmers in "obvious disregard of their rights." The judge dismissed the case before it went to the jury because of what he considered to be procedural defects, although some INS officers believe the

[2] "Deportation Order Threatens a Dream," *Los Angeles Times* (July 22, 1982).

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decision was politically motivated. Prosecutors are not at all enthusiastic about putting on trial ranchers who are just trying to hire willing hands to help bring in their crops.

Most smuggling cases are routinely plea-bargained down from the felony of "transporting" to "aiding and abetting" entry without inspection, a misdemeanor. More often than not, the sentence will be the few days time the smuggler has served while awaiting trial, and perhaps a couple of years probation. If the case is aggravated and involves an individual with a prior record, or one who is identified as a key member of a ring, or who caused or risked injury to his load by trying to outrun a patrol pursuit car, the Assistant U.S. Attorney will often press for the felony charge, in which case the sentence may run a few months rather than just a few days. "Mom and Pop" smugglers who are themselves illegal and who bring in friends and relatives may not be prosecuted at all, but rather set up for deportation instead, or returned to the border under Voluntary Return along with the aliens in their load.

This is true for most other immigration violations as well. As a rule, U.S. Attorneys simply are not interested in any but the most aggravated cases or those involving individuals who are professional criminals: smuggling ring organizers, arrangers of fraudulent marriages between aliens and U.S. citizens, or document counterfeiters. The ordinary alien who re-enters the country after being deported, or who makes a false claim to U.S. citizenship—both of which are felonies—is unlikely to be authorized for prosecution. As the Assistant U.S. Attorney views the matter, there is no point in prosecuting a man who tried to bluff his way past a patrol agent with a counterfeit birth certificate when, as the jury will view the matter, the man is just trying to feed his family. Thus, it is not hard to understand why many federal prosecutors are less than enthusiastic about taking immigration cases. In Chula Vista, the average sentence given out to immigration violators in FY 1982 (mainly but not exclusively smugglers) was only 1.4 months, and the average time served was probably about half of that.

Of course, other federal law officers have a hard time getting U.S. Attorneys to take their cases, but the INS labors under a special handicap because of the consensual, non-violent nature of immigration violations. Prosecutors may feel that since the INS has the civil remedy of deportation to use with immigration violators, they should not be bothered with such trivial offenses.

Deportation, however, is not very effective as a sanction. In the

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interior, many aliens will post the bond required—which can range from $500 to $2000—and then simply abscond, the bond becoming another part of the "tariff" for working illegally in the U.S. If the alien can afford an attorney, or get a legal aid organization to supply him with one, he can delay his hearing for months and even years if he gets into the federal courts. Should his attorney finally exhaust all of the appeals available, he can simply go back underground. In the busy urban districts, it may be weeks or months before investigators are assigned to track him down, by which time the trail may be cold. The District Director may be more concerned with cases involving aliens who have relief or benefit petitions pending and whose attorneys will cause trouble if decisions on their requests are delayed. Besides, unless the alien ordered to leave was a notorious criminal or suspected spy, who really cares whether he is reapprehended?

Consider the violation for which the most illegal aliens are apprehended: entry without inspection (EWI). EWI, which accounted for over 740,000 illegals along the southern border alone in FY 1982 (about 75 percent of all INS apprehensions), is a criminal offense for which up to six months imprisonment and/or a $500 fine can be imposed for the first misdemeanor offense, with up to two years in prison and/or a $1,000 fine for subsequent offenses. Twenty or thirty years ago, federal magistrates along the Canadian and Mexican borders apparently used to assess fines and occasionally sentence repeat border crossers to jail just for the EWI offense alone. But that was when Border Patrol agents in the Chula Vista and Tucson sectors, for example, apprehended no more than 50 or so illegals a month, compared with the approximately 30,000 and 4,000 (respectively) they catch now.

As with criminal prosecution, deportation processing has also become a scarce enforcement resource and is used very sparingly because of the scarcity of detention space and immigration judges to hear cases. Only if the alien has committed a crime, has "flunked the attitude test" by being abusive towards the agents, is recognized as a flagrant repeat crosser, or is suspected of being a smuggling guide, will he be set up for a deportation hearing. (Of course, if the alient *wants* a hearing, that is his right and he will get one.)

Manpower without power

Congress seems to believe that increasing the Border Patrol's manpower will achieve effective deterrence by greatly decreasing

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the flow of illegals. The Border Patrol currently has 2,300 active agents with an additional 218 agents assigned to anti-smuggling investigations. About 300 to 400 are on duty along the southern border at any one time. More agents would obviously help but are unlikely to bring the problem under control, given the large numbers of aliens who have been arriving since the 1960s. It is this explosive increase in the flow which is primarily responsible for the collapse of effective enforcement. The extension by the courts of Fourth and Fifth Amendment rights to aliens has also played its part. Even if there were enough judges, jail space, and prosecutors willing to take such cases, and officers were to go for criminal prosecution, they would have to give aliens the Miranda warning before questioning them. Aliens, knowing that they might be fined or go to jail, could clam up and enforcement along the border might easily come to a halt altogether. Ironically, it is only because officers are able to persuade aliens to admit to being illegal that they are able to remove them at a reasonable cost. Hypothetically, if all or most illegal aliens were to stand mute, or claim to be citizens and persist in their claim, immigration enforcement would collapse altogether. For then the burden would fall upon the government to prove that a person is an alien and deportable. (If an alien does not admit alien status, the government must determine where he was born, which can require extensive checking.) Enforcement works to the extent it does only because aliens are either insufficiently informed of the law's vulnerability in this regard, or because they are basically honest and unable to persist in a deception. If border deterrence were to improve dramatically, more Mexicans would very likely request deportation hearings, perhaps putting in political asylum claims to buy time, as other Latin Americans are now doing. The immigration courts and INS detention facilities would simply not be able to cope with such a development.

Lawsuits initiated by civil rights and other activist groups have also contributed to reduced enforcement effectiveness. Alien apprehensions right at the border meet with little public opposition, but in the cities civil rights activists regularly charge INS officers with unconstitutional detentions of citizens and legal immigrants during INS raids on businesses, with "shotgunning" in residential neighborhoods (questioning anyone on the street who looks Hispanic or foreign), or with coercing aliens into waiving their right to deportation hearings. INS Central Office management does not want bad publicity or additional restrictive rulings in other court

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districts, so policy guidelines on apprehensions are often more restrictive than what the federal court in a given district may require. Although they legally can go into any public place to conduct immigration checks, patrol agents no longer go into bars to conduct immigration status checks of patrons, mainly because of concern that an "incident" might occur. Officers in many of the bigger cities, where activist and press monitoring of INS activity is heavy, do not go into residential areas out of a similar concern over bad press and complaints to politicians. So, contrary to the impression given by the media, the day-to-day enforcement practices of INS agents are quite lenient in view of the sanctions theoretically available under the law.

Would the Simpson-Mazzoli bill help?

Is there a way around the current impasse? Hoping to bring the illegal alien problem under control, the Immigration Reform and Control Act of 1982 was introduced during the 97th Congress by Senator Alan Simpson and Congressman Romano Mazzoli. Although passed by the Senate, it did not come to a vote in the House by the session's end, but has been taken up again by the current Congress. It contains a number of remedies. Some, such as user fees on aliens using border facilities, to defray the cost of INS services, were long overdue. The widespread abuse of political asylum to delay a deportation order—in effect, buying a year or more of time for many who are primarily economic refugees—would also be corrected by streamlining the appeals procedure to dispose of frivolous claims. The new bill also tightens standards to prevent foreign students and other aliens who are "out of status" from using the Section 245 "adjustment of status" provision to become legal residents without having to return home first. (Many INS officers feel the Section 245 provision is a major inducement to immigration fraud because it encourages aliens to come to the U.S. rather than to wait abroad for an immigrant visa. If they can get here, they can acquire "equities"—U.S. citizen spouses, for example—that give them an obvious advantage over aliens waiting abroad.)

However, it is sanctions against employers caught hiring illegal aliens that supporters of the Simpson-Mazzoli bill consider the most important new enforcement tool. The intrinsic appeal of the employer sanctions provision is the "leverage" provided by shifting the burden from the INS to millions of business firms. If employers, knowing that they could be fined $1,000 per alien caught in their

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employ (and $2,000 for subsequent violations), were to screen out illegal alien job applicants, and word were to filter back over the border that jobs were no longer available, then fewer aliens would come up and INS would have fewer to apprehend and send back. Such is the theory.

There are problems with the theory, though. Aside from the added burden of having to "verify" each employee's authorization to work, business owners would be on very shaky legal ground in the event they took it upon themselves to make determinations of a worker's immigration status. Should an alien apply for a job and present the required documents, the employer would risk being sued for discrimination if he refused to hire the applicant on the suspicion that the documents were fraudulent. Employers are not competent to determine immigration and citizenship status claims, and lack the legal authority to do so.

Many illegals already carry fraudulent or borrowed I-151 green cards, social security cards, drivers licenses, and passports for a variety of reasons. Many are able to obtain bona fide social security cards and drivers licenses. With employer sanctions, this pattern of fraud may only grow: Aliens know they are not prosecuted for immigration fraud now, so why should their attitude change under new legislation? A more secure document such as a "tamper proof" social security card might help. But there is a good deal of resistance in many quarters to requiring an identity card for American citizens, and in any case it would take years for the government to issue new cards.

The burden of weeding out illegal aliens who make fraudulent claims would fall back on the INS no matter what identification system is used. Thus, the "leverage" in the Simpson-Mazzoli bill turns out to be just a mirage. The potential burden for INS investigators, even if their number is increased beyond 750 men and women, could well be *greater* than it is now because the new law might induce many more employers to call INS for help in checking their workforce. INS will not be able to respond to all or even most of these calls, so employers will probably begin to wonder if the law is to be taken seriously.

And could employer sanctions really be enforced effectively? The experience of Virginia, which authorizes a $1,000 fine for employers who knowingly hire illegal aliens, offers grounds for pessimism. Successful prosecutions have been very few and most of the fines imposed have been less than $100. True, the burden of proof for the government would be less under Simpson-Mazzoli because

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the fines are civil sanctions rather than criminal. Still, if the fines assessed are as small under Simpson-Mazzoli as they have been in Virginia, they simply may be viewed as the cost of using illegal workers. Repeat offenders could be criminally prosecuted, but it is unlikely that U.S. Attorneys will be any more interested in these cases than they are in most other immigration violations.

Were legalization (known popularly as "amnesty") also to be included in new legislation, many illegal aliens might find it to their advantage to avoid the verification check required for a job simply by claiming to be amnesty applicants. There would likely be no more penalty for fraudulently claiming amnesty than there is now for falsely claiming citizenship or legal resident status. Amnesty fraud would be extremely difficult to monitor. For example, how will the INS check a set of rent receipts for the ten, fifteen or twenty places a transient farm worker claims he has lived? What if the alien has no rent receipts because the labor contractor who supplied him with housing simply deducted the rent from his pay? If he supplies affidavits from the contractor or from friends and relatives, how can these be verified by the service? INS investigators and examiners in the larger cities already have their hands full with backlogged case investigations; could they competently review hundreds of thousands of suspect amnesty claims? Simpson-Mazzoli also proposes that voluntary community agencies be enlisted to help, but their staffs are unlikely to have the training or motivation to adequately weed out fraudulent applications.

Thus Simpson-Mazzoli could have the perverse consequence of *increasing* rather than decreasing the influx of illegals as word gets out that amnesty claims cannot be policed effectively. Indeed, enforcement at the southern border may unravel completely. Mexican EWIs would claim to be amnesty applicants and they would probably be given receipts which would authorize them to work until their amnesty claims are adjudicated. Under prodding from activists, the courts are sure to insist that all apprehended aliens be notified of their right to apply for amnesty, as has already begun to happen with political asylum claims.

Are there *any* remedies?

There are, alas, very few satisfactory options. Considerable political opposition, coming both from domestic interest groups and from abroad, would probably be mounted against any enforcement efforts that promised to be effective.

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Regarding illegal aliens from overseas, for example, INS might give more emphasis to pre-entry deterrence, because it is much cheaper to deter an entry than to apprehend and process an alien who already has managed to get in. Another advantage to pre-entry deterrence—besides the lower cost of screening and inspecting visas—is that aliens have fewer rights when they are abroad than when they are in the U.S. And since a high percentage of the aliens who would be deterred are the non-Mexicans whose higher investment in getting here inclines them to fight harder to prevent expulsion, any strategy that would deter them before entry would result in savings to the government. Pre-entry deterrence clearly makes much better sense than post-entry "mopping up," although the fact that aliens must reckon with the possibility they will be apprehended after they enter is obviously an essential element in pre-entry deterrence as well.

But an effective pre-entry screening of tourists, students, and business travelers from abroad—in effect, a more restrictive visa policy—will be opposed by domestic interest groups dependent on easy access to the U.S. by foreign tourists and students. Nor will it curb visa abuse by aliens who enter with bona fide non-immigrant visas and then stay on to work here. This latter category probably represents the largest category of overseas violators. But how can this significant category of violators be controlled without collective punishment—that is, without reducing the availability of non-immigrant visas to the countries whose nationals are abusing them? It is not likely that the State Department, let alone the Congress, would support such a measure.

And there are other difficulties. The "fraudulent entrants" study conducted by the INS in the mid-1970s showed that tighter inspection of travelers coming through ports-of-entry might turn up *ten times* the number of mala fide entrants currently being caught. However, intensified screening would also affect legitimate travelers, including many citizens, who no doubt would complain to congressmen and others. An air traveler's priority, after all, is getting to his luggage and getting home, not waiting an extra half-hour so the INS can apprehend a Guatemalan national trying to pass through customs as a Puerto Rican with a counterfeit birth certificate.

Political as well as technical feasibility must be considered in any effort to improve immigration enforcement. The net advantages of a strategy must be perceived as sufficiently great by the public to outweigh the inconvenience or cost to a variety of both

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domestic and foreign interests. And this affects every proposal for stiffer enforcement.

For example, there may well be ways of improving the Border Patrol's linewatch capability at the border. High concrete and barbed wire fencing along urbanized portions of the border would improve deterrence by channeling illegals into open desert terrain where they would be easier to catch. But this would cause friction with local residents and businessmen on both sides of the border, and complicate relations with Mexico. And if it merely improved the Border Patrol's catch ratio, without necessarily reducing the flow of illegals, then INS would be back to the "revolving door" of catch, send back, catch again, return again.

And if more Mexicans were to be set up for deportation hearings, then more detention facilities would have to be built. One can predict the response: Why can funds be found to build jails for immigration violators when there is not enough prison space for real criminals? Returning some percentage of Mexicans to border checkpoints far from where they were apprehended would be reasonably inexpensive, would not require the approval of Mexican authorities and would increase the cost to illegals by increasing the time and distance required to get to their U.S. destinations.

Immigration as a regulated activity

My conclusion is that a "regulatory" model comes closer to the facts of immigration enforcement than a "criminal justice" model. The issue is not simply catching and punishing violators, but rather increasing their cost of entry. Today, the "tariff"—the cost of illegal immigration—is not collected by the government, but by smugglers, travel agencies that arrange fraudulent visas, and other entrepreneurs in the business of helping aliens get to the promised land. During the federal bracero program, when both legal and illegal temporary workers crossed with relative ease into the southwest to work in agriculture, the Border Patrol's operations did indeed fit the "regulatory" model. In Texas, the patrol loosened up on enforcement during the seasons when workers were needed, and then tightened up again when work was slack and the ranchers did not want the "wetbacks" hanging around.[3] If the "tariff" were raised by increasing the barriers and improving deterrence, fewer Mexicans might find it to their advantage to try to enter. Whether

[3] See Julian Samora, *Los Mojados: The Wetback Story* (Notre Dame: University of Notre Dame Press, 1971), pp. 48-50.

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the incentive would be decreased more than marginally by an improvement in Border Patrol anti-smuggling and linewatch activities, given the wide disparity in wages between the U.S. and Mexico, is still open to question.

A more generous guest worker program should be added to the enforcement effort. Although the Simpson-Mazzoli bill does contemplate a modest return to the bracero program of the 1942-64 period by authorizing the entry of temporary agricultural workers, the numbers allowed to enter should be as large as possible. In exchange for a generous program, we should insist that the Mexican government provide better cooperation in helping to curb the EWI problem at the border, including allowing interior repatriation of repeat offenders and a crackdown on the document-counterfeiting, alien-smuggling, and other rings operating in the borderlands. The State Department has more influence on Mexican relations than does the Immigration Service; as a result, we have tended to give the Mexicans most of what they have demanded on immigration enforcement. Given Mexico's current economic problems, we have some bargaining chips and we should use them.

Enforcement resources could also be targeted more selectively by taking into account the social impact of different categories of violators. There may be clear advantages in focusing post-entry operations on aliens who become involved in crime, fraudulent use of welfare, and fraudulent efforts to immigrate, both because they impose greater costs on the U.S. and because they will have fewer defenders in the public. Such a shift in emphasis would be well received by many INS officers—especially the investigators, many of whom believe that more attention should be given to screening the prisons for both illegal and legal resident aliens convicted of crimes, along with those involved in immigration frauds.[4]

Even if Congress were to authorize a substantial increase in the INS budget, though, resources will still be very limited given the number of illegal aliens in the country. Thus, more attention needs to be given to the deterrence "payoff" of various enforcement measures. This payoff is maximized when the cost of apprehending or deterring an alien is low relative to the cost the alien incurs by entering or returning. Although in recent years the INS has begun to look more closely at how its limited resources can be applied

[4] See George J. Weissinger's study of INS investigators in New York City, "Law Enforcement and the Immigration and Naturalization Service: Resolving an Apparent Contradiction" (Ph.D. diss., New York University, 1982), pp. 145-146.

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more effectively, more thought needs to be given to enforcement strategies that maximize the payoff and are also politically acceptable to U.S. citizens.

Enforcement tactics and resource allocations are largely policy matters for INS management, but major changes in direction need Congressional support and may also require legislative remedies. Before rushing to pass the current bill, which could make the enforcement climate worse rather than better, lawmakers need to understand why enforcement under the current provisions of the Immigration and Nationality Act has weakened over the past two decades. The liberalization of aliens' appeals rights over the past several decades, along with the liberal policy of adjusting the status of aliens already here, has combined to create loopholes which undermine respect for the law. Many apprehended aliens are able to buy time to postpone deportation until they acquire what they need to remain in the country. The Simpson-Mazzoli bill addresses some of these problems, but Congress needs to look more closely at other holes that have opened up in the law.

As things stand now, many overseas aliens are learning that the surest way to get to the U.S. is to violate the law, and that the way to stay here is to use the law's generous provisions to delay deportation with frivolous appeals. The success of immigration attorneys in getting "favorable" court rulings—which have weakened the ability of INS to prevent fraud and remove aliens—has contributed to the problem. Yet this problem threatens the integrity of the law by undermining the incentives for law-abiding aliens to wait abroad to immigrate legally. If allowed to continue, it might well jeopardize America's traditional role as a haven for political refugees. As a frustrated public becomes increasingly restrictionist in its attitude, it may decide to lash out by curbing legal immigration. Tarnished by unrestrained judicial assault, along with the abuse of the appeals process, the golden door might eventually close on the very groups that should find haven on our shores.

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American Education: The Record is Mixed

RICHARD M. WOLF

BARBARA LERNER'S article in *The Public Interest* ("American Education: How Are We Doing?," Fall 1982) attempts to answer a number of questions that would enable one to assess American education. Clearly, this was an ambitious undertaking. One of the central questions in Lerner's article was, "What are the cognitive achievement levels of our students in comparison to those of their foreign peers . . .?" In attempting to answer this question, Lerner drew heavily on my book, *Achievement in America*,[1] and books by my co-workers in the International Association for the Evaluation of Educational Achievement (IEA). Unfortunately, her article contains a number of factual inaccuracies and elementary errors of interpretation that cast doubt on her conclusions. This article is intended to set the record straight and to raise several issues that Lerner neglected to consider.

Achievement in America is a report intended for a U.S. audience that reports on the six subject survey of the IEA. It is *not* one of the volumes in the international series as Lerner states. In the IEA six subject survey, representative samples of students were tested at age ten (Population I), age fourteen (Population II) and grade twelve (Population IV) in science, reading comprehension, literature, French and English as foreign languages, and civic education.[2] Not all countries tested in all subjects nor at all population levels. For example, the United States did not participate in the testing of English as a foreign language. The selection of the three population levels was made quite carefully. Population I was the last year in which students in all the participating countries were enrolled in elementary school and were being taught all academic subjects by a single class teacher. Population II was the last year in which schooling was compulsory in all the participating countries so that differential retention rates would not need to be taken

[1] Richard M. Wolf, *Achievement in America* (New York: Teachers College Press, 1977).

[2] In the U.S., all testing was done in both public and private (including parochial) schools in order to estimate national performance levels.

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into account. Population IV was the last year of secondary school and thus furnished a point for assessing the outcomes of pre-collegiate education.

Figures 1–8 in *Achievement in America* set forth the average performance of U.S. students in relation to the average performance in the other participating nations as clearly as possible. The only results in these figures that required special comment were those that dealt with the top 9 percent of the age group. These were described in *Achievement in America*. Simply put, country means at Population IV are influenced by the proportion of students still attending school. In the IEA six subject survey, these proportions ranged from a low of 9 percent to a high of 75 percent. Accordingly, means were calculated on that fraction of a nation's score distribution that would represent the top 9 percent of the age cohort. No such adjustments were made for Populations I and II since these were years of compulsory schooling.

THERE are two notable features of the U.S. results. First, the U.S. results are highly variable. In some subjects and at some population levels, the U.S. was at the highest levels internationally (e.g., reading and literature at Population II). In other cases, the U.S. performance was clearly at the lowest levels among developed nations (e.g., all tests in French at both Populations II and IV). Most of the U.S. averages were, however, somewhere in the middle although, excluding French, the U.S. averages were in the top half of the rank ordering of countries in six of the eight testings at the levels of compulsory education. This is a rather different picture from the one painted by Lerner. What makes the U.S. picture look bleak is the French results consisting of four different tests where the U.S. performance is unquestionably low. The second major feature of the U.S. results is the difference between the unadjusted and adjusted results at Population IV. In all cases where adjustment was made for differential retention rates, the U.S. means jump from the bottom half of the ranking of country means to the top half, except for literature where the unadjusted U.S. performance was in the top half of the country standings (but just barely) to begin with. No claim was made, as Lerner asserts, that the adjustment process wiped out the differences between countries. The results show that there is a considerable amount of cream in the U.S. sample but that it is heavily diluted by our high retention rate beyond the level of compulsory schooling.

Lerner chides me for "unaccountably" omitting data on retention rates for several countries—Japan, Israel, Ireland and Rumania. This criticism is unfathomable. Japan, Israel and Ireland did not test at Population IV so their rates of retention are not an issue. Thus, they were *accountably* omitted. In the case of Rumania, testing did occur at Population IV in French. However, no adjustments were made to the means in this subject at this level since it wasn't possible to estimate the percentage of enrolled stu-

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dents who were studying French. Retention rates were not needed and, hence, not sought.

There is, however, a more important issue with regard to retention rates. The IEA studies defined retention as the proportion of an age group enrolled in full-time schooling in a program that led to admission to a college or university during the last year of secondary school. The retention rates were reported by the participating countries in accordance with this definition. Lerner seems unhappy with this definition and registers her displeasure in a footnote. She then goes on to change the retention rates she did not like! Obviously, if one changes the numbers to suit one's case, then the results will come out as one wishes. Lerner's calculations based on her version of the data do not warrant comment.

Another major point where Lerner appears to have lost her way involves the opportunity afforded students to learn the subjects in which testing took place. In the science survey, for example, teachers in every school in which students were tested were asked to rate every item on the science tests as to the extent to which the students were taught the material being tested by the item. These ratings were aggregated at each population level in each country and labeled "Opportunity to Learn." The assumption underlying this exercise was that student achievement would be related to the opportunity to learn the content of a subject. The results for the United States are clearly consistent with this assumption. At Population I, opportunity to learn science in the U.S. was highest of the fourteen participating countries while the average performance of U.S. students was fourth; at Population II, opportunity to learn was sixth out of sixteen countries while U.S. achievement was in seventh place; and at Population IV, opportunity to learn was thirteenth out of sixteen countries while achievement was fourteenth. In short, there was a high degree of consistency between the opportunity afforded U.S. students to learn particular science content and achievement tests results based on that content. Why Lerner confused opportunity to learn with student ability is not at all clear.

Another subject in which opportunity to learn is important is in the area of foreign languages. The U.S. tested students in French as a foreign language. U.S. performance at both Populations II and IV is uniformly low. In fact, U.S. students performed lower in French than in any other school subject. One possible explanation for these results is that U.S. students study less French than do students in other countries. For example, the average U.S. student at Population II had studied French for 1.8 years at the time of testing while the average number of years of French study in the other countries testing at this level was 2.8 years. Clearly, an extra year of study is likely to make for a considerable difference in achievement. The results for Population IV are quite similar; 4.3 years of study in the U.S. and an average of 5.3 years in the other countries at the time of testing. One suspects that, in

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addition to the number of years of study, the value placed on the learning of French varies from country to country. Learning French in many countries is viewed as an economic necessity; in the U.S. it is apt to be seen as a cultural luxury. One of the big surprises to this writer has been the absence of any reaction to the dismally low performance of the U.S. students in French. Again, this is a matter for discussion and, more important, study.

Lerner makes a number of other errors in her report. The word knowledge test that was used in a number of countries is cited by Lerner as evidence of low achievement. This test was intended as a measure of verbal ability, *not* achievement, and was used solely for purposes of control in subsequent statistical analyses. Thorndike pointed this out as clearly as one could when he stated, "Thus, it appears that the [word knowledge] test should be a reasonably satisfactory measure of verbal ability for *within-country* analyses. It would only become suspect if it were used for cross-language comparisons." [3] Another error inheres in Lerner's statement that I and some of my IEA colleagues claim that the results of the estimated top 9 percent of the end of secondary school age group show, "no real differences between countries." This is patently untrue. What was said was that these results show *smaller* differences among countries than the unadjusted results. Simple inspection of Figures 1-8 in my volume bear this out. Finally, Lerner accuses the IEA researchers of being "not exactly forthcoming in reporting retention rates" so as to allow for between country comparisons. This is completely false. The retention rates are set forth in Table 15 of my volume. In fact, Lerner openly acknowledges these rates.

What then can be said about the performance of U.S. students in the subjects in which testing took place? The answer is quite a bit. Clearly, U.S. performance in French is very low no matter how it is viewed. Some explanation for this was offered above. In the other subjects, the results are mixed. In some subjects and at some age levels, U.S. performance is fairly high (science at Population I, reading comprehension, literature and civic education at Population II). In other cases, U.S. performance is middling (reading comprehension at Population I, science at Population II and literature at Population IV). Finally, in still other cases, U.S. performance is low (French at all levels and all other subjects except literature at Population IV). Adjustments for differential retention rates change this last picture considerably. Both avid boosters and harsh critics of American education are apt to be disappointed by the U.S. results because of the decidedly mixed picture. The other side of the coin is that, excluding French, and the unadjusted results in Population IV, the bulk of the national means for developed countries is within one-half of one standard deviation of the U.S. mean. That is, there is a considerable amount of bunching

[3] R.L. Thorndike, *Reading Comprehension Education in Fifteen Countries* (Stockholm: Almquist and Wiksell, 1973), p. 36.

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of countries. This does *not* mean that there are no differences between countries. There are, and these differences are statistically significant because of the large sample size involved. How meaningful these differences are, however, is open to interpretation. For example, at Population II in science, nine developed countries had means within four points of the U.S. mean (five countries above the U.S. mean and four below). Since the U.S. standard deviation in science at this level was 11.6 points, this represents about one-third of one standard deviation. How much importance one attaches to these differences is a matter of judgment.

It would be wrong to leave the reader with the impression that the IEA studies were organized and conducted as an educational Olympics. Nothing could be farther from the truth. The IEA studies were designed to gain information and understanding about how educational systems worked and what variables were important in learning. Much has been learned from these studies and much more needs to be learned. Accordingly, IEA has embarked on a number of new studies. Two studies that are particularly germane to the issue of Lerner's paper—how well are we doing?—are a second mathematics study and a second science study. In each study, a large number of test items from the first study in each subject will be administered, along with other instruments, to comparable samples in a number of countries. The resulting information will allow for a number of comparisons. Results from the first and second study in each country can then be compared to determine changes in achievement. Inter-country comparisons can then also be made. Since the number of participating countries has risen in both studies (currently thirty-eight nations are planning to test in science), a rich set of data will soon exist to help educators and others better to understand the complex process of education.

Such data will require careful study and interpretation. Lerner's analysis, unfortunately, does not contribute to the kind of understanding that is needed to advance educational thought and practice. The number of factual inaccuracies and elementary errors of interpretation is too large to be accepted. Furthermore, they create an impression of poor performance of U.S. schools that is incorrect. The picture of U.S. performance is too mixed to permit such a succinct and tidy conclusion. Admittedly, the IEA studies are difficult to wade through. They summarize the performance of hundreds of thousands of students in 22 different nations at several age and grade levels in a variety of school subjects. The number of variables is enormous. All this, however, is no excuse for the kinds of errors Lerner makes. American education is ill-served by such reporting.

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Facing the Unpleasant Facts About Achievement

BARBARA LERNER

ENDRE BALLÉR, of the Department of General Education of the Ministry for Cultural Affairs in Budapest, Hungary, had this to say about the results achieved by Hungarian students on the IEA tests:

> Hungarian students' relatively low achievement in reading caused us great concern . . . We realized that our general school curriculum is unambitious and obscure in its reading objectives, which may be one of the reasons why our students did so poorly on the IEA tests.[1]

I admire the clarity of that statement. I wish that an educator from my country, or at least one from the West, had made it. Instead, we have the statements of Richard Wolf and his Swedish counterpart, IEA President Torsten Husén.[2]

Wolf tells us that it is "incorrect" to conclude that American students generally performed rather poorly in comparison with their peers in other developed nations in the late 1960s and in the early 1970s. This is so, he tells us, because *if we exclude* scores on foreign language tests altogether, and *if we exclude* scores on tests of more than 90 percent of U.S. high school students in any subject whatsoever, "the bulk of the national means for developed countries are within one half of one standard deviation of the U.S. mean." This is not a comforting result: It means that even after all this excluding, there are still some instances in which the U.S. mean is more than one-half of one standard deviation below that of other developed nations. And Wolf does not tell us that to get this result *we must also exclude* U.S. scores on all tests of mathematics at all age levels, as he did in his book and in his reply.

If we stop excluding unpleasant results, put all of the IEA data together, and look squarely at the performance of American students as I tried to do in my article, we find a disquieting number of instances in which their mean scores are closer to a whole standard deviation below those of their foreign peers than they are to a half of a standard deviation. Differences in the neighborhood of one standard deviation are not negligible differences. They are substantial, and there is a solid evidentiary basis for believing that their impact on the American economy has been substantial too, and will continue to be, at least until about 1990.

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[1] Endre Ballér, "Commentary I on Implications of the IEA Studies For Curriculum and Instruction," in ed. Alan C. Purves and Daniel U. Levine, *Educational Policy and International Assessment: Implications of the IEA Surveys of Achievement* (Berkeley: McCutchan Publishing Corporation, 1975), p. 81.
[2] Torsten Husén, "Are Standards in U.S. Schools Really Lagging Behind Those in Other Countries?," *Phi Delta Kappan* 64 (March, 1983): 455-461.

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Never mind, the Panglossian wing of the IEA tells us. It is not that our senior high school students were doing poorly; it is just that we were so much more democratic and egalitarian than everybody else, and kept more of our students in school through the final year of secondary school than any other nation. That is a comforting explanation for the poor performance of American students, and I wish that it were true.

Unfortunately, the evidence is not in accord with it. In my article, I criticized the presentation in Wolf's book of IEA data on this question, objecting to a number of specific omissions and distortions. In his reply, he offers a gratuitous new example. He claims that: "Japan, Israel and Ireland did not test at all at Population IV so their rates of retention are not an issue. Thus, they were *accountably* omitted" (his emphasis). In fact, Japanese students took both the general and the special mathematics tests at this level.[3] Israeli students took the special mathematics test,[4] the reading comprehension test,[5] the word knowledge test,[6] and the test of English as a foreign language.[7] Irish students took the civics test.[8]

Wolf's argument is no better than his accuracy. First, and most obviously, the Japanese example shows that there is no necessary relationship between inclusivity and mediocrity. Their secondary school retention rate, like ours, was about 70 percent, but their students' mean scores were much higher than ours: on the general mathematics test, 25.3 to our 8.3; on the special mathematics test, 31.4 to our 13.8. Wolf's response to this awkward fact is to omit data on the Japanese.

The Swedes, too, had a retention rate of about 70 percent and while they were much less successful than the Japanese at combining inclusivity with excellence, they did manage to outscore American students most of the time. Wolf handles this awkward fact by applying an inconsistent standard in order to create a nonexistent difference between Swedish and American retention rates. He then complains that I object to his definition of retention rates because I prefer a different one. He is mistaken. I will buy any reasonable definition, consistently applied. What I cannot buy is the application of a double standard under which Swedish vocational students are excluded from the count while American vocational students are included. It is reasonable to include both, as

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[3] Torsten Husén, ed., *International Study of Achievement in Mathematics: A Comparison of Twelve Countries*, Vol. II (New York: John Wiley & Sons, 1967), pp. 24-25.
[4] Ibid., p. 24.
[5] Robert L. Thorndike, *Reading Comprehension Education in Fifteen Countries: An Empirical Study* (New York: John Wiley & Sons, 1973), p. 126.
[6] Ibid., p. 126.
[7] E. Glyn Lewis and Carolyn E. Massad, *The Teaching of English as a Foreign Language in Ten Countries* (New York: John Wiley & Sons, 1975), p. 103.
[8] Judith V. Torney, A.N. Oppenheim, and Russell F. Farnen, *Civic Education in Ten Countries: An Empirical Study* (New York: John Wiley & Sons, 1975), p. 105.

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I did; it would also be reasonable to exclude both. It is not acceptable to exclude them in some national tallies and to include them in others in order to pretend that retention rates explain all.

They do not, and the domestic data illustrating that fact are as compelling as the international data. Domestic data show that although the decline in American achievement began in the 1960s when our retention rates were rising, it accelerated in the 1970s when retention rates stabilized. Domestic data also show that the decline was greatest at the top, and that it was not just in the proportion of high scoring students but in the absolute numbers of them as well.[9]

Wolf admits none of this. He is willing, finally, to concede only that U.S. students did poorly in French. Indeed, he becomes so enamored of the French test that he counts it three times at each age level, once for each subscore, and then—like the orphan with chutzpah—complains that it unduly influences the overall results. That certainly seems true with regard to his tallies. It is not true for any of the tallies presented in my article. In those, mean scores on the French tests, like mean scores on all other tests, including mathematics tests, are counted once only at each age level and counted equally for all participating nations. When this is done, it is clear that the poor performance of American students was not confined to foreign language tests.

WHY American students performed so poorly is a more complex question. I addressed it at some length in my article, collecting together the scattered but cumulatively impressive evidence for the relevance of at least a few significant negative changes, analyzing the cultural context in which these changes took place. Wolf ignores all this and insists instead that a single euphemism—"opportunity to learn"—is, in and of itself, a sufficient explanation for the extraordinary decline in academic standards and achievement in this country in the last two decades, and the only possible one. Nonsense. Only a mind mired in educational bureaucratese could accept that.

For the rest of us, the important questions have to do with whether the decline reached Europe, too—but with a bit of a time lag, as with many cultural phenomena—and with whether America is beginning to regain some of the intellectual ground lost, as the still inconclusive findings from the early 1980s seem to suggest. Data from new IEA studies in progress should help to answer those questions, and readers dismayed by Wolf's presentation should not de-

[9] Rex Jackson, "An Examination of Declining Numbers of High-Scoring SAT Candidates," *Report for the Advisory Panel on the SAT Score Decline* (New York: College Board, 1976a); Rex Jackson, "A Summary of SAT Score Statistics For College Board Candidates," *Report for the Advisory Panel on the SAT Score Decline* (New York: College Board, 1976b); D. Perry and E.O. Swanson, "Decline in Minnesota College Aptitude Test Scores," in J. Fasold, ed., *Decline in Standardized Test Scores: A Widespread Phenomenon* (Salem, OR: Oregon Department of Education, 1974).

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spair at the thought of having to pick through prose like his to get at it. All IEA researchers do not subscribe to the peculiar standards that have marred so many UN-initiated ventures in scientific and cultural domains as in political ones.

To their credit, some IEA researchers have acknowledged the fact that their colleagues were sometimes less than candid in presenting the results of their research, and have made efforts to correct misleading impressions of the facts promulgated by the more ideologically zealous members of the group. In this connection, the volume edited by Purves and Levine on the results of the 1973 Harvard Conference on the implications of the IEA research is particularly noteworthy.[10] But my own favorite contribution to a restoration of appropriate standards was made by another IEA researcher, Gilbert Peaker, who quoted the philosopher of science, Karl Popper, as follows:

> The adoption of rationalism implies, moreover, that there is a common medium of communication, a common language of reason; it establishes something like a moral obligation towards that language, the obligation to keep up its standards of clarity and to use it in such a way that it can retain its function as the vehicle of argument. That is to say, to use it plainly; to use it as an instrument of rational communication of significant information, rather than as an instrument of "self-expression" as the vicious romantic jargon of most of our educationists has it. . . . And it implies the recognition that mankind is united by the fact that our different mother tongues, so far as they are rational, can be translated into one another. It recognizes the unity of human reason.

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[10] Purves and Levine, *Educational Policy and International Assessment.*

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CURRENT READING

FDA to Gerber: Square the Circle

The beaming Gerber baby may soon have to share his jar with a government-mandated warning. According to the *New York Times* ("Is the Hot Dog an Endangered Species?," April 24, 1983), Gerber's miniature hot dogs, or "meat sticks," are under attack by the Agriculture Department and the Food and Drug Administration.

On December 20, 1983, a Falls Church, Virginia woman reported to the Agriculture Department that her 14-month old son had nearly suffocated on a portion of one of the sticks. In evaluating her complaint, government officials relied on a study of childhood asphyxiation conducted by the Johns Hopkins School of Hygiene and Public Health. According to this study, between 1970 and 1978 six out of 42 Maryland children who died of asphyxiation had choked on hot dogs ("Childhood Asphyxiation by Choking or Suffocation," *Journal of the American Medical Association*, September 19, 1980). John Whitlock, Gerber's director of public relations, argued that children could choke on other foods, such as bananas or carrots, as well. But the government was not impressed, and decided that Gerber's label has to be changed.

Susan Baker, co-author of the Hopkins study, pointed out that "If you were designing a food built to specifications to choke young children, it would be the hot dog." Her suggestion that Gerber change the shape of its meat sticks has been taken up by Allen Forbes, chairman of the FDA's Health Hazards Evaluation Board. Unfortunately, experience indicates that this metamorphosis is not so easily accomplished:

> Mrs. Baker recommends that manufacturers produce "something very flat and less likely to choke children." But a Swift & Company official, who asked not to be identified, said the company experimented with a flat hot dog in the 1960's to fit the shape of a hamburger bun. The effort was abandoned, because, he said, "the hot dog is a sausage. And, if you make it into a different shape, you don't have a hot dog anymore."

Why China Can't Plan—but Hong Kong Can

What happens in a Communist country when its ideology clashes with the very planned economy that its leaders demand? The ex-

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ample of China indicates that planning suffers as a result. The political disarray created by Mao's Great Leap Forward of 1958 and his Cultural Revolution of 1966-69, for example, impeded the planners' ability to institute or even to envision long-term economic goals. And the absence of an independent press encourages the tendency of local party officials to overestimate their accomplishments, thereby undermining the accuracy of statistical information used by planners.

Under what conditions, if any, could a planned economy such as China's realize its goals? In a recent article in the *Wall Street Journal*, Audrey Donnithorne shows how China's welfare-minded planners could benefit from the unlikely example of laissez-faire Hong Kong ("Welfarism and a Planned Economy? Don't Leave Hong Kong," April 25, 1983):

> Primary and junior secondary education in government schools in Hong Kong is free, regardless of income, while in China school fees, although not universal, are widely charged. High-grade medical facilities are much more readily available to the poor in Hong Kong than in China, where the once-praised, but ill-trained, barefoot doctors are now recognized to be quite inadequate. Public assistance brings the income of Hong Kong's needy up to a minimum level, while in China no such comprehensive provision is made. Nearly half of Hong Kong's population lives in government housing which, both in its average standard and notably in maintenance, exceeds that generally available in Chinese cities.
>
> The basic reason for the difference in standards is, of course, that Hong Kong is much wealthier than China. Average wages in Hong Kong are around seven times those in urban state enterprises in China and Hong Kong's relative taxable capacity is much greater than that of China. Therefore Hong Kong can, and does, service its residents in a manner beyond China's capability.
>
> The benefits of Hong Kong's spectacular economic growth over the last 30 years have been spread throughout the community. Contrary to some foreign allegations, careful research by S.C. Chow and G.F. Papanek has shown that economic polarization hasn't increased: All social classes have grown richer. . . .
>
> China over the last three decades has made frequent rhetorical claims to operate a planned economy. In fact, its ambition has been far greater than its administrative capacity. Instead of following a plan, it has lurched along from crisis to crisis. In Hong Kong, the degree of official economic guidance attempted has been more nearly (although by no means completely) aligned with what could be implemented. As a result, the government of the Crown Colony has exercised more effective control than the authorities in China. . . .
>
> In Hong Kong, feasibility studies of individual investment projects are normally demanded by whoever is providing the finance because they stand to lose if the scheme is not properly considered. In China, examples of the grossest neglect of forethought abound in decision-making on major investments.

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The huge new steel rolling mill at Wuban, for example, was unable to reach its designed production capacity because the necessary supplies of raw materials, water, electric power, oil and gas weren't available in that location. If planning means anything, it should involve coordinating supplies of inputs with the construction of large factories.

Planning postulates a certain underlying stability in law and politics as well as in the economy. Here Hong Kong has the decided advantage over China. During the Cultural Revolution, for example, of all the local power holders with whom the Chinese central authorities had to deal, perhaps the only one who gave no anxiety to Peking, who never plotted against it and who could be relied on to behave in an orderly and predictable manner, was the British governor of Hong Kong.

Stepping on Nationalized Mines

Though few can afford it, a large number of Third World countries manage a full brace of nationalized industries: a national airline, nationalized media, perhaps a nationalized steel industry, and, if mineral production is important to the economy, nationalized mines. The governments of Chile, Zambia, Zaire, and many other developing nations have either taken over formerly privately-owned mines, or have developed deposits on their own. The object of such nationalizations was to eliminate exploitation by foreign-owned mining companies and to ensure that the local government reaped the full profits produced by the mines.

Now that the international mineral market is strongly influenced by nationalized mining operations, are things any better for these countries? A recent issue of *Important for the Future*, published by the United Nations Institute for Training and Research (UNITAR) as part of its Project on the Future, has the following to say on the effects of nationalization in a note entitled, "The Fall in Mineral and Metal Prices":

> Over the last two years many metal and mineral prices have declined sharply in real terms. Some prices fell almost to the levels of the great depression of the 1930s. This sharp fall in prices involved almost all metals, including gold, copper, and nickel, as well as some non-metallic minerals, such as phosphate and potash.
>
> In the past, when a large part of the mining industry was privately owned, a fall in prices led to the closing of mines at the highest cost, and when prices continued to fall, to the closing of other mines operating at lower cost levels. As a result of the closing of these higher cost mines, mineral supplies and stocks began to decline, thereby demonstrating the system's self-correcting mechanism.
>
> However, as a result of the nationalization and consequent government operation of many mines, and of the development of some mineral deposits by government companies in developing countries, there have been structural changes not only in the ownership of the mines, but also in the operating cycle of the mines. In many developing countries, the decline in prices has not lead to a decline in production for

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two reasons: (1) the government could not afford to reduce employment, and (2) the foreign exchange earnings of the mining industry were so essential that the mines were kept operating. . . .

The policy of a number of developing countries to maintain mineral production even in situations of sharply lower prices has a number of effects which need to be considered. Such a policy prevents the exhaustion or reduction of stocks, which is a precursor of future price increases, and may thus act as a moderating factor to price increases. Furthermore, by maintaining full production during periods of low prices, the producing countries may be selling its production and part of its reserves low, and what is perhaps more important, it may fail to accumulate reserve funds of sufficient size to be able to develop new reserves for future production. Even if one discounts the view that mineral resources are quite scarce and being rapidly depleted, there is the likelihood that future reserves may be lower in grade. As a result, in the future mines may be producing at a higher cost per unit output, and consequently the replacement cost of reserves may be much higher than the mines established years ago. This new trend may therefore create problems in the future in developing countries whereas in the market economy countries, mines are closed down when prices fall sharply and reopened when prices rise. This reaction to price movements assures that returns from a mine over its lifetime will be substantial, not only guaranteeing profits, but also providing sufficient funds for replacement of reserves.

Is there a solution to the problems brought on by nationalization? One suggestion—mentioned in the Brandt report—is for government-owned mining operations to combine in international cartels, similar to OPEC, to keep prices high. However, UNITAR reports that the prospects for such a scheme are not good:

> There have been, of course, attempts to solve the problem by the creation of cartels or similar arrangements among producers, but they have broken down in periods of depression, because minerals can be stored for long periods, and because there are generally too many producers both in industrial and in developing countries to control output.

Despite this apparently damning list of the failures of nationalization, UNITAR is reluctant to draw any harsh, capitalistic conclusions. All it can say is, "There is therefore no easy solution to the problem."

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